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SOCIAL LEGISLATION AND THE COURTS

DURING the past few years there has been a decided change in the popular attitude toward the courts. The judicial functions, which until recently were regarded with a reverence approaching awe, are being subjected to sharp analysis and criticism; and the movement for the recall of judges is now in full tide. There are some who attribute this changed attitude to demagogic politicians and to the innate perversity of human nature, as manifested in a part at least of our population.

Widespread movements of this character, however, cannot be so easily explained; no great popular agitation springs up out of the thin air. There are obvious facts which do much to explain the changed popular feeling toward the courts. It is coming to be generally understood that the state courts are not performing their functions with a high degree of efficiency. Our attention in the past has been so constantly directed toward executive and legislative inefficiency in the states that we have only just come to realize that the courts also have been inefficient. Judges seek to shift to the lawyers practicing before them the blame for this condition of affairs, but it is plain that both bench and bar are responsible. And for a large part of the technicality in our civil and criminal procedure the courts are directly and primarily responsible. Judges bemoan the fact that they occupy the position of mere umpires in the legal battles that are fought out before them, but their position is due largely to their failure to assert the authority which they possess. Furthermore, the conduct of business by receivers

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acting under direct control of the courts has not been above reproach, and here the judges have full authority.

But the most important factor in producing popular discontent with the courts is the judicial attitude upon social and industrial questions. As President Hadley has well pointed out,[1] our constitutional guaranties have largely been developed and applied by the courts for the protection of property rights. Under the social and industrial conditions that prevailed before the Civil War this development was, at least to some extent, justifiable, for property was then practically within the reach of all and its protection was clearly a matter of general interest. As the courts say, there is no property apart from ownership or interest in property by individuals, and the protection of property rights is a protection not of property as such but of individual rights to property. Where the acquisition of property is measurably within the reach of all there can be no conflict between property rights and individual rights.

But since the Civil War there has been developing in this country a larger and larger class to whom the acquisition of even a small amount of property is less and less possible. And at the same time there have appeared large accumulations of property in the hands of a small number of persons. Thus has arisen a conflict between property rights and individual rights. More accurately, perhaps, the conflict may be described as one between the claims of those owning or controlling large masses of property and the claims of those having little or no property. The claims of those having large accumulations of property are based upon the plea of the sacredness of property; and this plea finds recognition in our earlier constitutional principles. The claims of those having little or no property are based on the plea that the individual, even though without property, is of more moment than property; and this plea is supported by the humanitarian philosophy of the present day. These positions in the long run should not prove irreconcilable, but certain it is that the interests of owners of large property as such must give way to the broader

[1] "Constitutional Position of Property in America," *The Independent*, April 16, 1908.

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interests of society. The individual, whether with or without property, is the object of the new social and industrial legislation.

Our legal philosophy and our whole system of constitutional guaranties were developed to fit conditions when property was the most general interest of the community, and the highly individualistic philosophy of our law was one not unadapted to the conditions of this country in the early days. For at least a generation, however, we have been living in a state of social and industrial development to which the earlier individualistic philosophy does not fit itself, and the adjustment of legal principles and legal philosophy to these new conditions is a slow one. Our industrial and social organization has passed from a highly individualistic into a highly organized and centralized stage. Toward this development of industry our courts have on the whole taken a liberal attitude, because the policy of "hands off" constituted merely an application of the prevailing legal philosophy. But our present social and industrial organization has made necessary new legislation to protect individual rights which under earlier conditions did not need legal protection. And toward such legislation our courts have not been friendly, for legislation of this character does not harmonize with the individualistic philosophy which they still profess. Legal principles cannot change rapidly, and the strong conservatism of bench and bar makes a change slower than it should be.

Under the constitutional system as developed in this country the political philosophy of the judges is a matter of vital importance. They are policy-determining officers, because they have power to declare null and void, "on principles of constitutional law which are scarcely more than general moral precepts," laws enacted by the legislative authority. It is this function of declaring laws unconstitutional, especially as violative of broad and undefinable guaranties that "no one shall be deprived of life, liberty or property without due process of law," which has made the courts in this country essentially law-making bodies, determining in the end what legislative policies shall or shall not be adopted. The judicial control which at times defeats the purpose of legislation is not always exercised by declaring laws invalid, but often also by a narrow and illiberal interpretation and application of laws admittedly valid.

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The exercise of policy-determining functions by the courts causes no difficulty so long as judicial action is in accord with sober popular sentiment on social and industrial questions. But the power of the courts in recent years to declare laws invalid as depriving persons of "due process of law" has been exercised in direct opposition to growing popular sentiment and to present social and industrial conditions; and the "due process of law" clause, meaning what the judges in any particular case may decide that it means, is, as now interpreted, simply a means of vesting judges with power to declare unconstitutional any laws of which they disapprove. There are under this clause no fixed or definite standards for determining what laws are constitutional and what are unconstitutional. Judges are thus exercising political functions, without corresponding political responsibility; and inasmuch as such functions are being exercised in a manner opposed to public sentiment, popular criticism of the courts is a necessary consequence.

The fourteenth amendment placed in the federal Constitution in 1868 a provision that "no state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws." The fifth amendment had placed in the federal Constitution in 1790 a "due process of law" limitation upon the federal government; and most of the states had put similar provisions into their constitutions before 1868. These provisions, however, were little used before 1850. But when, because of the growing complexity of social and industrial organization in this country, the legislatures began to enact laws restraining uses of property which had previously been regarded as not improper, the courts interfered. Many of the decisions annulling new social and industrial legislation proceeded upon the theory that the fourteenth amendment had enacted Herbert Spencer's *Social Statics*, and took a position which made it impossible to adopt new remedies to meet new evils. The conflict between legal doctrine and social progress thus came, in the main, as it still comes, from the conscientious application to new conditions of a social and legal philosophy which does not conform to present facts; and the

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courts cannot be brought to see the necessity of new legislation because of the persistence of an antiquated philosophy.

From what has been said above, however, it should not be understood that all courts have been equally illiberal, or that there has been no improvement in the judicial attitude toward legislation. In recent years a number of courts have shown a distinct liberalizing tendency. The supreme courts of Wisconsin and Kansas have manifested a desire to test legislation by the present needs of the community, and there has been a similar tendency in Michigan, Illinois and other states. Except for the rather unfortunate lapse in the New York bake-shop case,[1] the Supreme Court of the United States has in the main taken a liberal attitude toward legislation aimed to meet new social and industrial needs. Yet there remains the fact that perhaps the greater number of our state courts are illiberal and, under our present constitutional and judicial organization, are able to block needed social and industrial legislation.

It is in large part against this attitude of the courts that the movement for the recall of judges is directed. Of the theoretical objections to which this plan is open, many may be met by a carefully framed recall provision, and the principle of the recall has aroused, on the whole, more heat than it would seem to justify. If the recall were adopted as to judges its use would probably be infrequent and its influence slight. It is doubtful, however, whether the recall will accomplish the end aimed at by its advocates; for this end, it may be suggested, is in reality not so much the occasional removal of an unsatisfactory judge as the bringing of the courts generally to a more liberal attitude in passing upon and in applying new social and industrial legislation.

The most serious difficulty which we face today is that occasioned by our dual form of government, in which two series of courts are applying the principles of the federal Constitution. Both the federal and state constitutions, as we have seen, have "due process of law" clauses, framed in almost identical terms, and in declaring a law unconstitutional a state court may base

[1] Lochner *v.* New York, 198 U. S. 45 (1905).

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its decision on both the state and federal constitutional provisions or on either.

The state courts are the final judicial interpreters of their state constitutions, and "due process of law" in any state constitution means what the highest court of that particular state interprets it to mean. Under these conditions it is not surprising to find that "due process" often means one thing in one state and another thing in some other state, and that it means something still different as interpreted by the Supreme Court of the United States. Under state constitutional provisions identical with or substantially similar to those in the fourteenth amendment, state courts have frequently annulled legislation, when similar legislation has been upheld by the Supreme Court of the United States.

If the highest court of a state declares a law unconstitutional as in violation of the "due process of law" clause of the state constitution only, such a decision may be overcome by a constitutional amendment inserting the proposed legislation or an authorization for the proposed legislation into the state constitution; and state judicial decisions may be and are being overcome in this way in states where the methods of amending the constitution are not so cumbersome as to be unworkable. So when, in 1899, an eight-hour day for mines and smelters was held to be repugnant to the Colorado constitution,[1] although a similar law had been upheld the year before by the United States Supreme Court, the people of Colorado immediately inserted in their constitution the legislation which had been annulled and thus overruled the state supreme court.

But most decisions of state courts declaring laws unconstitutional are based upon federal grounds or upon both state and federal grounds. If a state law is declared unconstitutional upon both state and federal grounds, the state constitutional objection may perhaps be overcome by a state constitutional amendment. But how as to the state decision in so far as it is based on federal grounds? At present a state decision declaring a state law invalid on federal grounds is final and con-

[1] *In re* Morgan, 26 Colo. 415.

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clusive on the question at issue. Under federal law the state court is the final interpreter of the federal Constitution within its territory, so long as it uses its power to annul rather than to sustain state legislation.

This situation is due to a limitation upon appeal to the Supreme Court of the United States which has existed since the Judiciary Act of 1789. Under the provisions of section 237 of the federal Judicial Code, a final judgment of the highest state court, "where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, *and the decision is in favor of their validity*," may be reviewed by the United States Supreme Court; but where a state court decides *against* the validity of its own state law on federal grounds there is now no appeal to the Supreme Court of the United States.

To take a concrete illustration: two years ago the New York Court of Appeals, in the case of Ives *v.* South Buffalo Railway Company,[1] declared the New York compulsory workmen's compensation law invalid as a violation of the "due process of law" clauses of both federal and state constitutions. Let us assume for the sake of this discussion that the decision is based on federal grounds alone. The South Buffalo Railway Company contends that the law violates the federal Constitution, and the decision of the state court is against the validity of the law, *i. e.* in favor of the railway company. Had the decision been against the railway company, *i. e.* in favor of the validity of the law, the company would have had a right of appeal to the United States Supreme Court, for a final settlement by that court of the question whether the law is a violation of the federal Constitution. Ives, who seeks compensation under the law, and the state, whose policy is involved, are equally interested in obtaining a final decision by the United States Supreme Court; but as to them the decision of the federal constitutional question by the state court is at present final and conclusive, for the decision has not been in favor of the state law but against its

[1] 201 N. Y. 271.

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validity. The question as to whether or not a compulsory workmen's compensation law is valid under the federal Constitution, as interpreted by the federal Supreme Court, must wait for settlement until some state court declares such a law constitutional and thus permits an appeal on the question by those contesting the validity of the law.[1] Until this is done the state court's interpretation of the federal Constitution is conclusive as to the state of New York, and a final determination of the question may be indefinitely delayed by illiberal state courts. And for some time at least the federal Constitution may be interpreted and applied in one state in one sense, in another in a different sense.

When the Judiciary Act was adopted in 1789 it was assumed that state courts would be too liberal in upholding state laws attacked as violative of federal rights, and the Judiciary Act was framed in view of this assumption. But the conditions are now directly reversed: state courts are stricter than the United States Supreme Court in their attitude toward legislation, or at least toward social and industrial legislation, attacked on federal grounds. This is a condition which was naturally to be expected when the fourteenth amendment broadened the federal guaranties of individual rights against state action, and when the United States Supreme Court began to enforce such guaranties somewhat strictly in some cases. If a law, whose constitutionality is to the slightest extent in doubt, is contested before a state court, two alternatives present themselves: the state court may hold the law valid and thus permit an appeal to the United States Supreme Court on federal grounds, with the risk that its decision may be reversed; or it may hold the law invalid, thus settling the matter without affording any opportunity for a reversal. Judges are human, and no court likes to have its opinions overruled; and in cases of doubt state courts are inclined to decide against a law and thus to avoid a possible appeal and reversal. The terms of the existing Judicial

[1] The value of this illustration is not weakened by the fact that soon after the New York decision a compulsory compensation law was upheld by the supreme court of the state of Washington. State *ex rel.* Davis-Smith Company *v.* Clausen, 117 Pacific Rep. 1101.

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Code therefore tend to raise an unavowed presumption against the validity of a state law attacked before a state court as violative of federal constitutional rights, unless the constitutionality of such law is fairly clear. The overruling by the United States Supreme Court of the liberal decision of the New York Court of Appeals in the bake-shop case has done as much as any other one thing to produce this attitude on the part of the state courts.

It thus appears that the terms of the present federal Judicial Code may cause a delay of many years in obtaining a decision by the United States Supreme Court as to whether certain classes of legislation are constitutional, and that they practically raise a presumption in state courts against the validity of state laws attacked as violating federal constitutional rights. Moreover, as the case of Ives *v.* South Buffalo Railway Company, cited by way of illustration, perhaps sufficiently shows, one party to such a case now has a right of appeal if the decision goes against him, while the other party under such circumstances has no appeal to the United States Supreme Court. These facts would seem to point to the desirability of so amending section 237 of the federal Judicial Code as to permit either party an equal right of appeal from state decisions declaring state laws invalid on federal grounds; and a measure for this purpose is now pending before Congress.[1]

In the first announcement of his plan for the "recall of judicial decisions,"[2] Mr. Roosevelt apparently recognized the situation that has been outlined above. In addition to the plan of overcoming by popular vote state decisions based on state constitutional grounds, he proposed that a popular vote in the states should be provided to overcome state decisions where such decisions hold invalid on federal grounds legislation of a class not yet passed upon by the Supreme Court of the United States. In making this suggestion he overlooked the fact that, under the Constitution of the United States, judges in the several states are bound by its provisions, "anything in the

[1] A rather full discussion of this proposed legislation may be found in the *Illinois Law Review*, December, 1911.

[2] *The Outlook*, January 6, 1912.

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constitution or laws of any state to the contrary notwithstanding," and that decisions of state judges on federal constitutional questions may not be controlled by the states themselves. It was in view of this fact, probably, that Mr. Roosevelt later limited his proposal to state constitutional questions. The purpose aimed at in his original proposal may, however, be accomplished, and accomplished more fully, by the proposed amendment of section 237 of the federal Judicial Code, so that all doubtful decisions of state courts holding state laws invalid on federal grounds may be brought promptly to the United States Supreme Court for final settlement.

Moreover, without such a change in federal legislation, Mr. Roosevelt's plan for the "recall of judicial decisions" based on state grounds could be of little value. It may be well to repeat that there are provisions in both state and federal constitutions forbidding a state "to deprive any person of life, liberty or property without due process of law." A state court may declare a state law invalid as violating (1) the state provision only, (2) the federal provision only, or (3) both state and federal provisions. Mr. Roosevelt's later plan would apply only to the first of these classes; but there are few decisions falling within this class, and they would be fewer still were the "recall of judicial decisions" adopted as a principle within the states. And if a state decision falls within either the second or the third class, no action that the state can take will control the state court's attitude on the federal constitutional question; and since the federal law does not at present permit an appeal upon this question to the United States Supreme Court, the state court's view of the federal Constitution is, for the time being, binding within the state. Indeed, even though a contrary view is taken by the United States Supreme Court in a similar case coming from another state, there is no way under the existing law by which that view may be made to control the courts of the state that has taken a narrower attitude regarding the federal Constitution, although a state court will ordinarily recognize the superior force of a decision of the United States Supreme Court upon a federal constitutional question. Dean William Draper Lewis suggests that the state statute involved

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may first be tested in a case brought in the federal courts, under the provision of the Constitution with respect to federal jurisdiction in suits "between citizens of different states"[1]; but in most of the cases that here concern us the facts do not warrant the bringing of suit in an inferior federal court with a consequent appeal to the Supreme Court of the United States.

Suppose Mr. Roosevelt's "recall of judicial decisions" to be in operation in a state. A state court holds a statute invalid as violating "due process of law" in state and federal constitutions. So far as it is based on the state constitution, the decision may be recalled; but so far as it is based on the federal Constitution, it cannot be recalled by state action, and is binding upon the state, without the possibility of an appeal to the United States Supreme Court, unless the federal Judicial Code be amended. Nothing in fact can be accomplished by the recall, except perhaps to shift somewhat the basis of state decisions, at least with respect to questions upon which the federal Supreme Court has not already passed.

No one of the supporters of the "recall of judicial decisions" seems at first to have realized the necessary dependence of the plan upon such an amendment of the federal Judicial Code as has been discussed above. Finally, indeed, and with some difficulty, the principle was embodied in the Progressive platform that "every decision of the highest appellate court of a state declaring an act of the legislature unconstitutional on the ground of its violation of the federal Constitution shall be subject to the same review by the Supreme Court of the United States as is now accorded to decisions sustaining such legislation." Yet when a measure for the accomplishment of this purpose was pending in the recent session of Congress, practically no support was received from those members of Congress who now style themselves Progressives.[2] It was reserved for Senator Root to aid in carrying through the Senate a measure which would have accomplished at least a part of the purpose

[1] *Annals of the American Academy of Political and Social Science*, September, 1912, p. 324.

[2] An exception should be made, however, in favor of Senator Clapp of Minnesota.

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sought to be accomplished.[1] But such legislation is somewhat prosaic, and only the spectacular is of value in an active campaign.

Let us consider briefly some of the other aspects of Mr. Roosevelt's proposed "recall of judicial decisions." He says, and says properly, that "at all times, as regards state constitutional questions, the people of each state should have the right to determine for themselves, after due deliberation, what the definite position of their governmental representatives is to be on any given constitutional question." An overruling of state courts on state constitutional questions by popular action has not been unusual in recent years. Thus, as has already been noted, the people of Colorado in 1902 inserted in their constitution a provision fixing an eight-hour day in mines and smelters, thereby overruling a decision of the supreme court of that state declaring a law for the same purpose to be a violation of the state constitution. And so the people of New York expect to overcome the New York Court of Appeals decision, in so far as it declares compulsory workmen's compensation to be a violation of the state constitution. Mr. Roosevelt's suggestion upon this point may therefore be said to be equivalent to a proposal for a somewhat different method of popular action upon state constitutional questions.

Mr. Roosevelt's plan was at first thought to present an easier method of passing upon constitutional issues raised by judicial decisions; but as limited by Mr. Roosevelt himself, and by Mr. Ransom, whose book[2] has Mr. Roosevelt's approval,[3] it will be more difficult, in a majority of the states, to recall a judicial decision than to amend the constitution. In States like Illinois and Pennsylvania there is need for a simpler method of amending constitutions, but the proposed "recall of judicial decisions" is too narrow in its operation to meet this need; and in the states which now have simple amending methods the Roosevelt

[1] Senate Bill 3749, as it passed the Senate.

[2] William L. Ransom, Majority Rule and the Judiciary (New York, Charles Scribner's Sons, 1912), pp, 13, 149, 154.

[3] *Ibid.* Introduction.

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plan will not make it easier for the people to pass upon state constitutional questions.

What, then, are the advantages of this plan? It is urged that the recall of decisions, while it would not be easier in most of the states than the present method of amending the state constitution, would be more adaptable. If, for example, a workmen's compensation law is held unconstitutional, it is said that what the people want to do is to vote whether that particular law shall be brought back into force, not to vote on a constitutional amendment authorizing the legislature to enact compensation laws in general and thus permitting the passage of a law of a different character from the one held unconstitutional. The people, it is said, want the law which has just been declared unconstitutional, and by the recall of the decision the constitutional bars are to be let down just far enough to permit that particular law to get over.

Yet this very definiteness of the issue presented to the people, while it may be of advantage in some cases, and while it may sometimes present a simpler question to the people, is perhaps the most serious defect of Mr. Roosevelt's proposal. Social and industrial legislation is now in a state of experiment and change. Let us suppose that a workmen's compensation law is passed by a state legislature, and then held unconstitutional by the highest state court. This decision is recalled; that is, the particular law in question is no longer to be open to state constitutional objections. This law comes into force and some of its provisions work badly. In order to remove these undesirable features, the next legislature amends the measure in some important respects. Now the popular vote on the original measure has said that that measure of workmen's compensation, and that measure only, shall be relieved from state constitutional provisions as interpreted by the state court; and the court, if it accepts this popular interpretation of the constitution, will now almost surely hold the amended compensation law unconstitutional. And we are again back at the point from which we started. The plan is less adaptable and more cumbersome than the present methods of amending constitutions in most of the states.

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Again, it is urged that the "recall of judicial decisions" has merits in that it involves less interference with broad constitutional guaranties than does the older process of constitutional amendment. Take, for example, an illustration used by both Dean Lewis and Mr. Ransom:

> Or, again, take some recent history in Colorado. In 1899 the supreme court of that state declared unconstitutional an act which prohibited the employment of persons in underground mines for longer than eight hours per day, except in case of emergency where life or property was in imminent danger. This decision was rendered in spite of the fact that the Supreme Court of the United States had, during the previous year, held that a statute of Utah, identical in terms except as to the penalty prescribed, was a valid police regulation. As a result of this decision, the people of Colorado in 1901 approved the following amendment: "The general assembly shall provide by law, and shall prescribe suitable penalties for the violation thereof, for a period of employment not to exceed eight (8) hours within any twenty-four (24) hours (except in case of emergency where life or property is in imminent danger) for persons employed in underground mines or other underground workings, blast furnaces, smelters, and any other reduction works or other branch of industry or labor that the general assembly may consider dangerous to health, life or limb." Hence, exactly as in the other illustration given of workmen's compensation acts, any act regulating the hours of labor in the employments mentioned which the legislature chooses to pass, no matter how arbitrary the regulation, must be upheld by the courts acting in obedience to the amendment. It would be entirely possible for the general assembly to prescribe six hours, or four hours, or any period less than eight hours as the period of employment.[1]

To take this position is simply to misunderstand, or entirely to ignore, the existence of two series of constitutional limitations resting upon state legislatures. What the Colorado legislature did was to say that certain laws regarding hours of labor should not be subject to state constitutional limitations. Whether or not such legislation violates the "due process of law" clause of the federal Constitution is still a question which may be presented to either state or federal courts. To say that the indi-

[1] Lewis, *loc. cit.*, pp. 318, 319. *Cf.* Ransom, *op. cit.*, p. 143.

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vidual has been deprived of any essential constitutional guaranties by this amendment is equivalent to a statement that the Supreme Court of the United States cannot be relied upon to protect private rights in appropriate cases.

The fact that individual rights are adequately protected by the federal Constitution suggests a different line of thought from that heretofore pursued, and a different proposal from that heretofore discussed. Since the fourteenth amendment, adopted in 1868, provides that "no state shall deprive any person of life, liberty or property without due process of law," it would seem that state "due process" clauses are mere surplusage, performing no useful function in the protection of substantial rights; and such is in fact the case. Yet in state decisions the state "due process" clauses still occupy a position equally important with that of the fourteenth amendment. As the highest state courts are the final judicial interpreters of their state constitutions, it not infrequently happens that the state "due process" clause is interpreted differently from that of the federal Constitution, and that legislation not repugnant to "due process" under the federal Constitution, as interpreted by the federal Supreme Court, is held invalid as a violation of an identical provision of a state constitution. So in Ives *v.* South Buffalo Railway Company the New York Court of Appeals said that a compulsory workmen's compensation law was a violation of the state "due process" clause, even though it might be held not to violate an identical provision of the federal Constitution.[1]

Little can be said in defense of such an attitude, for in such a case a law cannot be said to be so clearly unconstitutional as to warrant judicial annulment. If the federal guaranty be a sufficient one to protect all substantial rights, why retain the state "due process" clauses? They simply delay needed reforms, inasmuch as they enable an ultra-conservative state court to retard a uniform settlement of questions of public policy, in so far as such settlement is dependent upon constitutional construction. It would seem better to remove from our state constitutions all

[1] 201 N. Y. 271, pp. 298, 317, 319.

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these broad general guaranties, where the interests involved are sufficiently guarded by the federal Constitution, rather than to resort to the cumbersome processes of state constitutional amendment (or of recalling judicial decisions) in order to overcome, in each individual case, state decisions based upon such superfluous state provisions.

Mr. Roosevelt's aim may be accomplished more fully and less cumbrously by two measures:

Take from the state constitutions the broad guaranties of "due process of laws" and "equal protection of the laws," leaving all cases involving such guaranties to be settled under the fourteenth amendment to the federal Constitution.

If these clauses are removed from state constitutions, contests over the validity of new social and industrial legislation must then be based almost entirely, if not entirely, upon the provisions of the fourteenth amendment to the federal Constitution. An amendment to the federal Judicial Code in the sense suggested in this article would permit all such cases to be brought promptly from state courts to the United States Supreme Court for final settlement.[1]

It may be urged that these suggestions simply involve a greater concentration of control over legislation in the hands of the United States Supreme Court and do not better the situation. In fact, however, they involve no increase in the power of the federal government. All that is proposed is to remove one of the two present checks upon state legislation, leaving to the United States Supreme Court a control which it already possesses in last resort. And the situation would be improved; for, as has already been noted, the United States Supreme Court has on the whole been more liberal than the state courts in dealing with new social and industrial legislation. A higher ability and a broader outlook may be expected from members of the United States Supreme Court than from the judges of many of our state courts; and because the decisions of the highest federal court attract wider attention, they are on

[1] These suggestions were first made in my volume on The Revision and Amendment of State Constitutions (1910), and were repeated in more definite form in the *Michigan Law Review*, December, 1911.

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the whole made under a greater sense of responsibility. In addition, this court, by virtue of its unique position at the head of our judicial organization, is more exposed to criticism, and the influence of well directed and fair-minded criticism is apt to be greater than in the case of the state courts.

The writer of this paper is in hearty sympathy with the purpose of Mr. Roosevelt's proposal. But there is nothing essentially new in the proposed "recall of judicial decisions" except its name. Dean Lewis has said that it "involves no new principle, only a new method." It is to be questioned whether the new method promises to be of great value.

In solving the problems which arise from the unduly conservative attitude of state courts on constitutional questions, the following steps may be necessary or desirable:

(1) Amend section 237 of the federal Judicial Code so as to permit a wider appeal from state courts to the United States Supreme Court in cases involving federal constitutional questions.

(2) Introduce an easier method of amending state constitutions, in those states whose constitutions are now difficult to amend.

(3) Remove "due process of law," "equal protection of the laws," and other clauses of a similar character from state constitutions, where these clauses merely duplicate limitations upon state action contained in the federal Constitution.

(4) Require that no statute be declared unconstitutional unless the decision of the court is concurred in by more than a bare majority of the judges.

As a measure of practical reform, the "recall of judicial decisions" is of little value, inasmuch as in most states today the same purpose can be accomplished better by the ordinary method of constitutional amendment. But for purposes of agitation the "recall of judicial decisions" has proven of inestimable value. This proposal and that for the "recall of judges" have awakened the people to a realization of the position of the courts in our constitutional system and have made it clear that some alteration of present conditions is desirable.

W. F. DODD.

UNIVERSITY OF ILLINOIS.

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"PEOPLE'S RULE" ON TRIAL

THE OREGON ELECTION, NOVEMBER 5, 1912

IF the presidential campaign had not proved so engrossing, the recent election in Oregon would have commanded the nation-wide attention of students of politics. The official returns are now at hand, and these latest results from America's most active political laboratory are deserving of careful analysis.

First, as to candidates. In recent years a substantial majority of Oregon electors have voted the Republican ticket. Yet divisive issues and factional fights between aspirants for office have resulted in the election of Democrats to the positions of state governor and federal senator. In a state where the Republican ranks were already so badly divided, the incoming of the Progressive party made a Democratic victory a foregone conclusion. The aggregate vote for presidential candidates was 137,013. Of this vote the Republicans polled 25.2 per cent; the Democrats, 34.4; the Progressives, 27.4; the Socialists, 9.8; and the Prohibitionists, 3.2. For candidates for Congress the aggregate vote in the three districts was 130,910, and two Republicans and one Republican-Progressive were the winners.[1] The long struggle to secure popular control of the federal senatorships, has focused attention upon that office. In November there were six candidates, and the election was hotly contested. The incumbent, Senator Bourne, figured upon the ballot as "Popular Government candidate"; but of the total vote he polled only 19.4 per cent. The rest of the vote was divided as follows: Republican, 28.8; Democrat, 30.1; Progressive, 8.3; Socialist, 8.3; Prohibitionist, 5.1.[2]

[1] The votes cast in the several districts—62,530, 28,280 and 39,100—raise some question as to the degree in which the last districting of Oregon complied with the law's requirement that the districts shall be, as nearly as may be, of equal population.

[2] The highest state offices to be filled were secretary of state and justice of the supreme court, for which were polled 130,985 and 126,213 votes respectively. In each case a Republican was elected by a decided majority. For the minor offices there was fusion; in each case the candidate having Republican endorsement was elected.

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But for the Oregon voter, even when he is called upon to choose forty-four officers from a list of one hundred and seventy-seven candidates, the election of officers is but the curtain-raiser to the real play. When he has finished his task as an "elector," he settles down to his work as a "direct legislator." At this last election thirty-seven legislative proposals of state-wide scope were put before him for his verdict.[1] Of these, fourteen were proposed amendments to the constitution, only four of which were adopted. Of the four adopted, two had been proposed by initiative petition and two had been referred to the people by the legislative assembly.

Of the thirty-seven measures, twenty-eight were placed upon the ballot by initiative petition; six were referred to the people by the last legislative assembly; three were acts of the legislative assembly on which a referendum had been secured by popular petition. Of these thirty-seven measures, eleven were adopted and twenty-six were rejected. The voters approved one in three of the measures referred to them by the legislative assembly, and one in three of those on which they had demanded a referendum. Of the measures proposed by initiative petition—measures which had not come before the legislature at all, or had been ignored or defeated by that body—the voters approved two out of five.

Proposed by any one of three methods and scattered promiscuously over the ballot were many measures dealing with a few general topics. Thus, eight of the thirty-seven related to taxation and finance, a subject which has been in hot debate in Oregon for a dozen years. It is to be remembered that several of the men who have been most prominent in developing "people's rule" in Oregon are ardent single-taxers, whose first enthusiasm for direct legislation arose from their conviction that it might serve as the means for bringing in their favorite reform. Their aim has not changed, nor has their zeal abated. At successive elections prior to 1910, constitutional amendments tending to place practically the entire tax burden upon annual

[1] In several counties, the voters also passed upon one or two local measures, all proposed by initiative petition. *Cf. infra*, p. 22, n., p. 29, n.

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land values had been submitted, only to meet defeat. In 1910 a measure, for which a Portland labor organization stood sponsor, was placed upon the ballot, providing that the people of each county might "regulate taxation and exemptions within the county, regardless of constitutional restrictions and state statutes, and abolishing poll or head tax." The last feature was the one stressed in the campaign book. The announcement that this amendment had been adopted, by a small majority, called out a storm of protest. The measure was declared to be, in reality, a "county-option single-tax amendment," which the voters had been fooled into passing by its misleading ballot-title. Be that as it may, during the next two years the tax fight was furious. On the one hand, the single-taxers put forth every effort, both to secure the adoption of their programme by individual counties under warrant of the amendment of 1910, and to secure the adoption of a state-wide single-tax amendment in 1912. Oregon became the critical battlefield of the single-tax propaganda in America. Not only was a large appropriation from the Joseph Fels Fund assigned for carrying on the agitation in Oregon, but Mr. Fels himself took the field at the height of the campaign. The opponents of the single tax, on the other hand, were aroused to unprecedented efforts. Their speeches, editorials and pamphlets showed much more fighting spirit than heretofore. Moreover, as an antidote for the single-tax proposal, the board of state tax commissioners (composed of the governor, the secretary of state, the state treasurer and two other members) and the legislative tax committee united in urging the adoption of seven measures, which together would effect a veritable revolution in the state's financial system. These may be summarized as follows:

(1) Providing for a uniform rule of taxation, except on property specifically taxed; for the levy of taxes upon different classes of property, and for the equitable apportionment of state taxes among the several counties. (Rejected: 51,852 to 56,671.)

(2) Permitting taxes to be levied upon different classes of property at different rates. (Rejected: 52,045 to 54,483.)

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(3) Repealing "all of Section 1a of Article IX[1] except that part prohibiting poll and head taxes in Oregon" and adding "a provision prohibiting the declaration of an emergency in any act passed by the Legislature regulating taxation and exemptions." (Approved: 63,881 to 47,150.)

(4) Providing for the taxation of incomes, from whatever source or sources derived. (Rejected: 52,702 to 52,948.)

(5) Exempting from taxation all household furniture, domestic fixtures *etc.* actually in use, and all wearing apparel, jewelry and similar personal effects actually in use. (Approved: 60,357 to 51,826.)

(6) Exempting all intangible personal property (debts, notes, mortgages, stocks, bonds *etc.*) from taxation, except bank stocks, shares and banking capital. (Rejected: 42,491 to 66,540.)

(7) Radically revising the taxation of inheritances. This complicated measure, 16 pages long, proposed rates progressive in proportion to the amount of the transfer and varying according to the degree of kinship. If the transferee were an immediate ascendant or descendant of the deceased, the rate was to progress from one per cent on amounts ranging from $5000 to $25,000 up to five per cent on any amount in excess of $1,000,000. In other cases, the rate was to progress from two per cent on amounts ranging from $1000 to $10,000 up to twelve per cent on any amount in excess of $1,000,000. (Rejected: 38,609 to 63,839.)

The single-taxers, on the other hand, submitted but one measure:

(8) "Providing for specific graduated taxes, in addition to other taxes, upon all franchises and rights of way, lands and other natural resources in excess of $10,000 under one ownership, and assessing water powers in the counties where situate; exempting from taxation all personal property of every kind, and improvements on, in and under land, except a county may enact a county law to tax the same." (Rejected: 31,534 to 82,015.)

In the campaign book the two parties to the financial controversy joined issue sharply. The single-taxers especially drove home their points by incisive arguments. They showed, in tables, how much greater exemption certain named wage-earners and farmers would enjoy under the "graduated tax and

[1] Namely, the so-called "county-option single-tax amendment," adopted in 1910.

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exemption amendment" than under the amendment exempting household furnishings, and they gave a long list of individual and corporate owners of unimproved land in the several counties who, under their proposed amendment, would pay sums ranging from $10,000 to $50,000 "in addition to the regular and special tax levies on the assessed values."

Amid such a welter of tax proposals what were the voters to do? In the first place they not only rejected the state-wide single-tax amendment by an adverse majority of over 50,000, but by a majority of nearly 17,000 they repealed the county-option single-tax measure of 1910.[1] To this day the decisiveness of the defeat of the single tax is a mystery to many a close student of Oregon politics. On the eve of the election it was thought not improbable that it might succeed. The explanation has been suggested that, aside from their distrust of innovation, the people of the state resented the activity of outside leaders and the attempt, through a propaganda subsidized by foreign capital, to force an issue in Oregon for the effect to be gained in other states. But, having thus given a staggering blow to the single-taxers, the voters showed little inclination to follow the lead of the board of tax commissioners. They adopted the one proposal which friends and foes alike deemed of least importance—that exempting household furnishings—and rejected all the other "reform" measures. On the proposal to tax incomes from whatever source derived, the vote was very close: it was defeated by only 246 in a vote of 105,650. But the amendments providing for the exemption of intangible property and for the progressive taxation of inheritances were defeated by about 25,000.

Next to taxation, the development of highways was the subject which most actively claimed the voter's attention. No less than seven "road bills" appeared upon the ballot. Only two of these were approved by the people, both of them restrictive in effect: prohibiting in the one case the state, and in the other any county, from increasing its indebtedness for road-

[1] In three counties a proposal was submitted for a local single-tax law, under warrant of the 1910 amendment. In each case, it was rejected by a vote of about two to one.

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building in excess of two per cent of the taxable property within its borders. (The votes by which these measures were approved were 59,452 to 43,447 and 57,258 to 43,858). The other road measures illustrate admirably the strain to which direct legislation is being subjected in Oregon; also, as some will say, the good sense of the voters in defeating measures which are not clearly preferable to rival proposals. Two elaborate measures were introduced by initiative petition: one urged by the Oregon State Grange, to create a state highway department (rejected: 23,872 to 83,846); the other, without any acknowledged sponsor, to create a state road board (rejected: 30,897 to 75,590). Both were long and complicated measures, closely duplicating each other in several sections, and requiring careful discrimination to determine which would give promise of the higher effectiveness. The other three road measures all dealt with a single matter. In 1910 the state constitution was so amended as to allow counties to issue bonds for building permanent roads. But in a test case the supreme court of the state held that the amendment was not self-executing. To meet this difficulty three measures were submitted to the people, each empowering any county to issue and sell bonds for road construction. The first was urged by the State Grange (rejected: 49,699 to 56,713); the second was without sponsor (rejected: 43,611 to 60,210). The third was supported by an argument purporting to be "submitted by the People of Southern Oregon," and signed by "Wm. M. Colvig, for the People of Southern Oregon"; but his credentials were not spread upon the record. It has been a moot question, what would happen if conflicting measures should chance to be adopted at the same time. This "Southern Oregonian" took no chances on that point. The ballot title of this measure ended with the following novel clause: "and repealing all constitutional amendments and acts in conflict with the proposed amendment, *including those submitted to the people at this election.*" Interesting developments were prevented by the rejection of this proposal, by the heaviest vote cast against any of the three: 38,568 to 63,481.

Three measures were designed to modify the operation of

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"people's rule." The first of these, referred to the people by the legislative assembly, proposed to require for the adoption of any constitutional amendment a majority vote of all the electors voting at such election, instead of merely a majority of those voting on the particular amendment. (Rejected: 32,934 to 70,325.) The second, proposed by initiative petition, included this very same requirement—an interesting case of overlapping—but insisted also that a majority of all such electors be required to adopt any *initiative* measure, while a majority merely of those voting thereon should suffice to reject measures *referred* to the people. (Rejected, 35,721 to 68,861.) The sponsors for direct legislation assailed both of these measures as devised to abolish the initiative. They pointed out that from 1857 to 1900 Oregon's constitution required that amendments be approved by a majority of all electors voting at the election, and that during those forty-three years not a single amendment secured enough votes for its adoption. They cited nineteen measures, enacted since 1902, which would have been rejected had this proposed restriction been in force. The voters came to the defence of the existing rule by majorities of substantially 35,000.

The third of these measures, urged by the People's Power League, was designed to reorganize the executive and legislative departments of the state government so as to bring them into accord with the spirit of direct legislation. It set forth in detail the operation of the initiative and referendum; and it provided for a legislative assembly consisting of but one chamber, containing sixty elected members, "chosen by such method of proportional representation of all the voters that, as nearly as may be practicable, any one-sixtieth of all the voters of the state voting for one person for representative shall insure his election." The governor and also the leading candidates of the defeated parties were to be *ex officio* members, each being the proxy in the legislative assembly for the total number of electors who had voted for his party's defeated candidates for representatives in the legislative assembly. Fifteen different classes of subjects were enumerated, upon which the legislative assembly was prohibited from passing special or local laws. In

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general, this exceedingly complicated measure was the same as that submitted to the voters in 1910, though some of the absurdities in the earlier draft—notably its method of filling vacancies in the legislature—had been weeded out. The majority of over 40,000 (31,020 to 71,183) against this proposal, as compared with the majority of only 7335 against its more radical prototype in 1910, is another indication that Oregon voters are not to be stampeded into revolutionary change of the structure of their government.

The very first measure on the ballot, and the one which called out the largest vote (118,369), was the equal-suffrage amendment, "extending the right of suffrage to women." This is the fifth time in a dozen years that Oregon voters have passed upon this question. Heretofore the adverse majorities had steadily increased. In 1910 it was defeated by 23,795. But in that year the women won the ballot in Washington and the following year in California. Hemmed in on the west by the Pacific, and on the north, east and south by equal-suffrage states, Oregon yielded; or, as an ungallant observer put it, "in Oregon, mere man, finding himself 'between the Devil and the deep sea,' preferred not to drown!" The amendment was ratified: 61,265 to 57,104.

Three measures related to the state university. The first of these proposed that a single board of regents be created for the University of Oregon aud for the State Agricultural College, and that the support of the two institutions be derived exclusively from an annual levy of six-tenths of a mill on the dollar on all taxable property within the state. Advocates of this measure urged that concentrated authority and an assured income would create a more harmonious relation between the two institutions and promote higher standards of efficiency. On the other hand, opponents insisted that the tax would prove excessive in comparison both with needs and with ability to pay; that the two institutions ought to be combined at one place, thus avoiding duplication; and that present sources of income were adequate, until the state's educational policy should be settled. (Rejected: 48,701 to 57,279). The other bills were: for an appropriation of $175,000 for a new admin-

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istration building for the state university, and of something over $153,000, for salaries, improvements on buildings and grounds *etc.* at the same institutions; and for an appropriation of $175,000 for a library building and museum, also at the state university. Both were heavily defeated: 29,437 to 78,-985 and 27,310 to 79,376.

The second place on the ballot was given to a proposal to create the office of lieutenant-governor, and to determine the order of succession in case of the death or disability of the governor. In such an event, the duties of the governorship were vested by the constitution in the secretary of state—an arrangement which tended to disorganize the work of both offices. This measure had been passed by unanimous vote in both houses of the legislative assembly, and was then referred to the people. No argument was presented against it in the campaign book, yet it was defeated (50,562 to 61,644) probably because it would have raised taxes by $200!

By a sweeping majority (64,508 to 48,078), it was decreed that in all cases where labor is employed, directly or through contractors or agents, by the state or by any minor political unit, no person shall be required or permitted to labor more than eight hours in any one day, except in cases of emergency or necessity, and then at double pay. Contractors are to be required to give bond that these rules will be observed, and also, when the contract is for a public building, that no liens or claims shall be filed against it.

By a majority of over 60,000 (82,981 to 21,738) the voters approved an act referred to them by the legislative assembly, making the stockholders in banking corporations liable to "pay for the benefit of depositors an amount equal to the par value of the stock held by any stockholder in addition to having originally paid the par value therefor"—imposing thus upon stockholders of Oregon state banks the same liability as that which rests upon stockholders in national banks. Having thus safeguarded deposits, the voters defeated (48,765 to 57,293) the "Blue Sky Bill," modeled on the existing Kansas law, and intended to protect purchasers of stock and bonds by regulating and supervising the corporations selling corporate stocks and

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securities and by requiring a state license prior to any sales or negotiations therefor. Opposition was directed not against the object of this measure, but against its failure to cover false representations in sales of land *etc.* There was objection also to creating another costly appointive commission, instead of leaving the administration of such a law in the hands of the present elective officers.

Three measures dealt with penology. By a vote of 41,951 to 64,578 the voters refused to abolish capital punishment in Oregon. An act prohibiting the employment of state penitentiary convicts by any private person or corporation, but authorizing the use of their labor on public highways and institutions, was approved (73,800 to 37,492); and, by substantially the same vote, similar regulations were applied to county, city and town convicts (71,367 to 37,731).

At the preceding session of the legislative assembly an act had been passed, "vesting the Railroad Commission with power and jurisdiction to supervise and regulate every public-service corporation and utility in the State of Oregon, as to the adequacy of the service rendered and facilities provided, the fairness of rates, tolls and charges to be collected from the public therefor" *etc.* A referendum petition forced the submission of this measure to the voters' verdict. Its opponents charged that it was not a copy but a parody of the Wisconsin law, since the omission of certain provisions of that law perpetuated the franchises of two or three of the greatest of the public-service corporations; and they urged that the cost of supervision ought not to be saddled upon the taxpayer. Yet the voters—as did those of California in 1911—ratified (65,985 to 40,956) this enormous extension of the railroad commission's power.

Under the laws of Oregon, a county may not be created nor its lines changed by an ordinary act of the legislature; the matter must be submitted to the people. At the November election a measure was submitted providing a procedure whereby such changes might be made by vote of the electors in the areas affected; it was rejected: 40,199 to 56,992. One special bill for the creation of a new county was urged in the campaign book by the "Chairman of the Cascade Committee" as a matter

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of great public convenience; in the region in question, however, opponents to the number of about 200 signed a declaration that this was "a measure for more offices and more officers," and the voters of the state defeated the project: 26,463 to 71,239.

The legislative assembly of 1911 had passed an act creating a state printing board, fixing the salary of the state printer and of the secretary of the board, and providing for the purchase and operation of a state printing plant. This law was to take effect January 1, 1915. An initiative petition placed upon the ballot a proposal that this law should go into operation December 1, 1912. This was opposed in a twelve-page argument by the state printer *in esse*, who protested that it would violate the state's contract with him by ousting him in the middle of his term. He further alleged that the law in question was full of crafty schemes to secure a state printing plant under the control of socialist members of the Salem Printers' Union, and that the attempt of the sponsors of this law to put it into immediate effect was occasioned by their fear that the legislative assembly of 1913 might "remedy the rascalities of their joker-filled law." Another argument, by a state senator, sustained the state printer's contentions, bore witness to his honesty and efficiency, and insisted that the state must not violate its contract with him. The project was defeated: 34,793 to 69,542.

A strange measure to be proposed by initiative petition was one "fixing the percentage that freight rates on less than car-load lots shall bear to car-load lots and to establish minimum weights and maximum freights." Its provisions are highly technical and its specific ratings would seem to be of little significance to the average voter.[1] Not a word of explanation or argument accompanied this measure in the

[1] For example, its first section reads: "The classification ratings of freight shall bear a uniform relationship of one class to another class, and the percentage of the first class shall be 100, and the other classes shall be the following percentages of the first class:

Classes	1	2	3	4	5	A	B	C	D	E
Percentages.	100	84	70	59	50	42	35	29	24	20."

Railway men declare that it is impossible to tell what the law means, and insist that its enforcement would throw everything into inextricable confusion. A temporary injunction was promptly secured to prevent the law from going into effect.

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campaign book, yet nearly 104,000 voters passed judgment upon it, and it was approved: 58,306 to 45,534.

The Traveler's Protective Association was sponsor for a bill creating the office of "hotel inspector," and appropriating $7000 a year for the salary and traveling expenses of such officer and of his deputy, by whom all hotels in the state should be inspected at least twice a year. The bill contained an attractive list of items of comfort and convenience which the hotels must provide. Yet it was rejected by a majority of over 75,000 (16,910 to 91,995), in the largest aggregate vote cast upon any of the thirty-seven measures, with the single exception of the equal-suffrage amendment.

That the initiative may be used in behalf of conservatives as well as of radicals is indicated by two measures attributed to the Employers' Association of Oregon. The first of these, in most sweeping terms and with redundant legal phrasing, prohibited boycotting or picketing any industry, workshop, store or factory, and any attempt to persuade persons working therein from continuing such employment, under penalty of a fine of from $100 to $1000 or of imprisonment for from thirty days to one year, or of both fine and imprisonment. The other bill prohibited the use of public streets, parks and public grounds for holding meetings for public discussion or speech-making purposes in any city or town of a population of 5000 or over without a permit from the mayor thereof. In the campaign book both of these measures were fiercely denounced as violating fundamental civic rights, and no argument in their favor was there presented. Though both were rejected, the vote of nearly 50,000 in favor of each of them (49,826 to 60,560 and 48,987 to 62,532) indicates a wide-spread distrust of some types of labor leaders and agitators.

This completes the series of state-wide measures.[1]

[1] Aside from the bills previously noted (*supra*, p. 22, n.) to secure the single tax by county action, four other local bills were submitted:

(1) Prohibiting the building of a court-house in Harney County before 1916, and to refund to the taxpayers paying the same all moneys collected for building such court-house. (Adopted: 778 to 391.)

(2) To establish a Taxpayers' National Bank of Jackson County. (Rejected: 1975 to 2379.)

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In what kinds of measures did the Oregon voters take most interest? The largest aggregate vote (118,369) was polled on the question of woman suffrage. It amounted to 86.4 per cent of the vote cast for the leading presidential elector, the office which called forth the heaviest vote. Next in order of size were the votes on the bill creating the office of hotel inspector and on that providing for a state highway department. The lowest vote (97,191) was cast upon the measure for a new method of creating counties; it amounted to 70.9 per cent of the vote cast for the leading presidential elector.

Of the thirty-seven measures on the ballot, thirteen were both advocated and opposed by arguments in the campaign book. Upon twelve measures arguments were presented on only one side, though in some cases from more than one interested party. Thirteen measures were unargued. Of the eleven measures which were approved, seven were submitted without argument, one was opposed, while three were both advocated and opposed.

A summary glance at the following list of measures approved shows common qualities which may give some hints as to the working of the new legislative processes. With but two exceptions the successful proposals are very brief, making hardly more than one simple change in the existing law; in many cases they are merely prohibitive. They are as follows:

(1) Extending the suffrage to women. (Ten lines.)

(2) Prohibiting the increase of state debt for road-building in excess of two per cent of its taxable valuation. (Twelve lines.)

(3) Applying the same limit to county debts for road-building. (Nine lines.)

(4) Prohibiting the legislature's declaring an emergency in passing any finance act, and repealing the county-option single-tax law. (Three lines.)

(5) Imposing double liability on stockholders in banks. (Eight lines.)

(3) Reducing the number of commissioners of the port of Portland from seven to three, making them elective by the people *etc.* (Rejected: 13,931 to 18,668.)

(4) Abolishing the county high-school of Wallowa County. (Adopted: 1031 to 665.)

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(6) Exempting from taxation household furnishings and wearing apparel. (One page; but all that was new was in three lines.)

(7) Prohibiting the employment of state penitentiary convicts by private persons or corporations. (Twelve lines.)

(8) Prohibiting the employment of county or city convicts by private persons or corporations. (One and one-half pages.)

(9) Prescribing the eight-hour day for laborers in the employ of state, county or city. (One and one-half pages. In this, and in the preceding measure, the substance of the proposal is of the simplest.)

Upon seven of these nine measures no argument was presented on either side. There remain, thus, but two measures, in the entire list of eleven which secured the voters' approval, which required more than a minute's time for reading and analyzing their provisions. Technical and complicated was the one-page proposal for fixing freight rates on less than car-loads lots; yet it hit at a "monopoly" against which every shipper of freight had a fancied grievance. The only other measure approved was the one vesting the railroad commission with power "to supervise and regulate every public-service corporation and utility in the state." This, it is true, is a very long and complicated measure, comprising eighty sections and covering twenty-four pages. It is more than twice as long as this article. But this measure, it is to be noted, came before the voters not by popular initiative, but by referendum petition, after its merits had been canvassed and its many sections "licked into shape" in the regular session of the legislature.

This election was Oregon's fifth trial of direct legislation in its modern forms. The following table (page 32) shows the number of measures, proposed by each of the three processes, that have been submitted to the people at the several elections, and the percentage of measures, thus proposed, that have been approved at the polls. It is no mere coincidence that as the number of measures submitted at a given election has risen from two to thirty-seven, the percentage of those approved has fallen from 100 to 29. The data clearly indicate that the greater the number of measures upon the ballot, the smaller the proportion that will be approved. This probably results both

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ACTION OF THE OREGON VOTERS ON MEASURES SUBMITTED, 1904–1912

YEAR	ALL MEASURES			PROPOSED BY INITIATIVE			REFERENDUM BY PETITION			REFERRED BY LEGISLATURE		
	SUBMITTED	ADOPTED	PERCENTAGE ADOPTED	SUBMITTED	ADOPTED	PERCENTAGE ADOPTED	SUBMITTED	ADOPTED	PERCENTAGE ADOPTED	SUBMITTED	ADOPTED	PERCENTAGE ADOPTED
1904 . .	2	2	100	2	2	100	0	0	0	0	0	0
1906 . .	11	8	72.7	10	7	70	1	1	100	0	0	0
1908 . .	19	12	63.1	11	8	72.7	4	2	50	4	2	50
1910 . .	32	9	28.1	25	8	32	1	0	0	6	1	16.6
1912[1] .	37	11	29.7	28	8	28.5	3	1	33.3	6	2	33.3
1904–12.	101	42	41.5	76	33	43.4	9	4	44.4	16	5	31.2

[1] Since this article has been put into type, there has come to the writer, from an exceptionally acute Oregon student of politics, the following comment upon the election of 1912. "On the whole, the election seems to me to point to two conclusions. The majority of the voters are not only thrifty to the point of parsimony, but they will damage their own interests to avoid taxes. The second is that the mass of voters are very conservative, and don't want to consider changes. If they think they can hit a corporation they will do it, every time, but for constructive legislation they are hopeless. They would like to destroy abuses, but the trouble seems to be that they are incapable of thought except in a somewhat elemental fashion. This sounds as if I were getting conservative, doesn't it? There are too many measures submitted, even for educational purposes. However, the present system beats the old boss system. I feel convinced of that, and perhaps some day communities will recognize that they must send better men to the legislature." Later comes the word: "The legislature in Oregon is taking hold of business seriously, and with the apparent purpose of making a record."

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from the relatively slight importance of some of the measures and from the increasing fatigue and decreasing attention of the voter. An initiative measure stands little chance of enactment unless it is a very brief proposal of a single, simple change in existing law. The voters are showing a canny wariness as to involved schemes for the radical "reform" of their system of government, submitted for their Yes or No. They are appreciating more clearly that such propositions may need searching analysis and painstaking amendments at the hands not of a group of like-minded advocates but of a body genuinely representative of Oregon's varied citizenship, and that the initiative does not afford opportunity for this needful work.

"It's like voting a bed-quilt!" was the comment of a Portland policeman, as he came from the polls in 1910. The ballot last November was yet larger: 34½ inches long by 18¼ inches wide. On that ballot 16,910 voters recorded their solemn approval of a proposed law requiring that the sheets on hotel beds should be at least 103 inches long and 81 inches wide. Of more importance than a law prescribing minimum dimensions for sheets would be one prescribing maximum dimensions for ballots—or rather, a maximum limit upon the number of measures to be submitted thereon. How soon will Oregon leaders become convinced that restraint in the use of the initiative is one of the conditions most essential to its usefulness? Or does the adoption of the initiative lessen the opportunity for genuine leadership, by laying open the ballot to invasion by dozens of measures with no responsible backing, brought there by the good-natured heedlessness of petition signers, and distracting the voter's attention from the questions of real moment?

GEORGE H. HAYNES.

WORCESTER, MASSACHUSETTS.

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SEPARATION OF POWERS: ADMINISTRATIVE EXERCISE OF LEGISLATIVE AND JUDICIAL POWER[1]

II. PRINCIPLES OF JUDICIAL REVIEW

1. *Introduction*

ALTHOUGH in many instances administrative authorities may perform functions which cannot be differentiated from those commonly exercised by the legislature or by the judiciary, it is not to be inferred that the attempt to transmute the theory of the separation of powers into a rule of law has been wholly ineffective. Inroads upon the theory have been permitted only where the courts find some over-ruling governmental necessity or where the interest subjected to administrative interference is not within the fold of constitutional protection.

It is true that in most of the instances where the doctrine has been invoked in judicial proceedings to resist the action of administrative authorities, the contention has not been sustained. But this is due to the fact that the legislatures have been cautious in not extending the power of the administration beyond the boundaries which the courts have described. The subject matters which continue to be dealt with by courts and legislatures far exceed both in number and importance those committed to the care of administrative authorities. With the increasing complexity of social and economic conditions and the consequent widening of the field of governmental activity, the scope of administrative power is being constantly enlarged. But the hand of the court is always at the throttle to stay any advance which in its opinion is an unwarranted invasion of private right. Where for any reason the power vested by statute in an administrative body is deemed to exceed that permitted by the Constitution, the courts will treat any action taken under the delegation as entirely invalid.[2]

[1] The first part of this study was printed in the POLITICAL SCIENCE QUARTERLY, vol. xxvii, pp. 215–238.

[2] Portland *v.* Bangor, 65 Me. 120 (1876); *cf.* part i, of this study, *loc cit.*, p.

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Even where the courts concede that the administration has power to act, the specific action taken remains subject to judicial supervision. A distinction is to be noted, however, between the relief which may be granted in reviewing an administrative regulation, which promulgates a general rule to govern all future instances that may arise within the scope of its provisions, and the relief available when the court is considering an administrative finding of fact or application of law to facts found.

Where the administrative action is in the nature of an adjudication, the court may reëxamine the evidence and determine the fact for itself [1] or apply some other rule of law than that adopted by the administration.[2] It may itself do the very work entrusted to the administration, if in its opinion this work was improperly performed. But if for any reason the court disapprove of an administrative regulation, judicial relief must be confined to nullifying the administrative action and treating the matter in litigation as though no provisions beyond those contained in the statute had been promulgated or authorized. The court cannot put forth a new regulation, although its opinion may indicate what new regulation would be sustained. If the provisions of the regulation are separable, the regulation may of course be declared invalid in part only. In so far as prosecutions for violation are concerned, special orders of individual application are controlled by the same considerations which apply to general regulations. The court can merely declare the order void or valid. If, however, the administration is seeking judicial enforcement of some order directing specific remedial action, the court is not confined to the two alternatives of granting the decree prayed for or of denying all relief. Such part of the order as the court deems excessive may be regarded as separable. The court may, in practical effect,

233, n. 2. Wong Wing *v.* United States, 163 U. S. 228 (1896); *cf.* part i, *loc cit.*, p. 235, n. 3.

[1] State *ex rel.* McCleary *v.* Adcock, 206 Mo. 550 (1907). Miller *v.* Horton, 152 Mass. 540 (1891).

[2] Johnson *v.* Towsley, 13 Wallace, 72 (1871). Turner *v.* Williams, 194 U. S. 279 (1904).

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modify rather than annul the administrative order,[1] which amounts to much the same thing as annulling it and issuing a new order in its place.

The reason underlying this distinction must be as follows. The promulgation of regulations partakes of the nature of action commonly exercised by legislative bodies. Power to take such action may, from the point of view of actual practice though not in judicial theory, be delegated to administrative bodies, but it may not be exercised by the courts, save in certain matters relating to judicial procedure. On the other hand, the function of reaching conclusions of fact from evidence submitted and that of applying rules of law partake of the nature of action regularly exercised by judicial authorities. Though an order directing specific remedial action in respect to a designated concrete thing may be issued by a legislature, such orders are also issued by the courts where the general requirements of a statute have been violated. In these realms, therefore, the courts may substitute their own judicial action for what they regard as the improper action of a judicial nature taken by the administration.

2. *Judicial control over administrative regulations*

An ordinance or regulation will of course always be held invalid for any reason that would nullify the same provisions in a statute. In Illinois Central Railroad Company *v.* McKendree,[2] a quarantine regulation of the secretary of agriculture was held invalid because sufficiently broad to apply to commerce wholly within a state. Regulations made in the exercise of the police power are regarded with the same critical eye cast upon statutes. In State *v.* Speyer,[3] the regulation of a state board of health prohibiting any pig-pen within one hundred feet of an inhabited dwelling was held void, on the ground that it reached beyond the scope of necessary protection and prevention into the domain of restraint of lawful business and use of property.

[1] Health Department *v.* Dassori, 81 N. Y. State Reporter (47 N. Y. Supp.), 641 (1897). Health Department *v.* Rector of Trinity Church, 145 N. Y. 32 (1895), *semble.*

[2] 203 U. S. 514 (1906).

[3] 67 Vt. 502 (1895).

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In fact, these regulations of administrative bodies are accorded even less judicial respect than that given to a statute. In Potts *v.* Breen[1] it was held that, in the absence of express authority from the legislature, a certain rule of the state board of health was invalid because unreasonable. The courts exercise the same supervision over the regulations of such state boards as over municipal ordinances. The power to declare these void, when in the opinion of the court they are unreasonable, has long been exercised. It is often justified, however, on the ground that the legislature cannot be presumed to have delegated authority to do a thing unreasonable, the court seeming to assume that the judicial estimate of unreasonableness was the test in the subconsciousness of the legislature.

Since the regulations of the administration are to supplement the provisions of some statute and the power to make them rests upon legislative grant, it is clear that the exercise of the power must not transcend the authority delegated. In Little *v.* Barreme,[2] a naval officer who had seized a vessel on its voyage *from* a French port, under a regulation of the secretary of the navy ordering seizure of vessels sailing *to or from* a French port, was held not protected from civil liability for his act, when the statute by virtue of which the secretary issued his orders authorized the president to instruct commanders to seize vessels only when these were going *to* a French port.[3] So also where the statute made provision for the free introduction of animals imported for breeding purposes, "upon proof thereof satisfactory to the secretary of the treasury and under such regulations as he may prescribe," the court held invalid a provision in the regulations that the collector must be satisfied that the animals are of superior stock,[4] as an attempt to incorporate a limitation into the statute where it clearly intended to include animals of all classes. The regulation was in effect an amendment of a revenue law, which could be made only by Congress.

Regulations may not impair rights which flow from the

[1] 167 Ill. 67 (1897). [2] 2 Cranch 170 (1804).

[3] *Cf.* Hendricks *v.* Gonzales, 67 Fed. 351 (1895).

[4] Morrill *v.* Jones, 106 U. S. 466 (1882).

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statute by imposing requirements inconsistent with its provisions. It has been held that the department cannot, upon discovering that the color test prescribed by statute for determining the standard of sugar is fallacious, remedy the defect by substituting a chemical test; for Congress alone has authority to levy duties.[1] And where a statute required oath as to contemplated alienation upon making entry for public land and failed to require such oath at the time of securing patent, though prescribing oath on other matters, it was held to be manifest from this omission that the motives of the applicant, though material on making entry, were not significant at the time of receiving patent; and the requirement of such oath at the later time was held void because it defeated the right given by the statute to make contract for alienation in the interim.[2]

Compliance with regulations less stringent than the requirements of the statute will not excuse an individual as against the government from full compliance with the law. In an action against the collector, under a statute permitting suit if protest be filed within ten days from the time of the liquidation of the duties, it was material when such liquidation took place. The protest complied with the regulations of the secretary of the treasury, which regarded such liquidation as not complete in the case of goods in bond until their final withdrawal. The court held that this was erroneous, and that the importer who had complied with the regulations had not complied with the law.[3]

A curious modification of the doctrine that regulations inconsistent with the delegation are void is suggested in a dictum in La Bourgogne,[4] where the statute under consideration authorized the board of supervising inspectors to make regulations as to the equipment of vessels with life-boats, rafts *etc.*, and provided

[1] Merritt *v.* Welsh, 104 U. S. 694 (1881).

[2] Williamson *v.* United States, 207 U. S. 425 (1908). For examples of rulings by the law advisers of various executive departments as to regulations and usages in conflict with statutory provisions, *cf.* Wyman, Administrative Law, chapter xii, *passim*.

[3] Merritt *v.* Cameron, 137 U. S. 542 (1890).

[4] 210 U. S. 95 (1908). Also *sub nom.* Deslions *v.* La Compagnie Générale Transatlantique.

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that such regulations, when approved by the secretary of the treasury, should have the force of law. Failure to comply with the law subjected the company to a penalty and also deprived it of the right to certain limitations on its liability for damages in case of accident. In the case at bar, the company had complied with the *regulations*, but it was contended that the regulations were inconsistent with the statute and that the company had therefore not complied with the *law*. The court was of opinion that the regulations were not inconsistent with the statute, but observed:

> Even, however, if it were otherwise, as compliance on the part of the petitioner with the regulations adopted by the board was compelled by law, it cannot be that upon it was cast the duty of disobeying the regulation at its peril, thus, on the one hand, subjecting it in case of non-compliance to the infliction of penalties, and, on the other hand, if it fully complied with the regulations, imposing a liability upon the assumed theory that there had been a violation of law.

It would thus appear that third parties cannot take advantage of inconsistency between the statute and the regulations when they have been complied with by those whose conduct they are to govern, although the latter may allege such inconsistency as an excuse for non-compliance, or after compliance may find it a bar to the acquisition of rights claimed from the government under the statute. If, however, the government may enforce a penalty for violation of the law after there has been compliance with the regulations, it may through its own officers contrive for the individual the same unpleasant dilemma from which the court desired to spare him in La Bourgogne.[1]

When the regulation is, in effect, merely the interpretation of the statute, the court will determine for itself whether the interpretation is correct.[2] In United States *v.* Symonds,[3] where the

[1] *Cf. infra*, p. 44.

[2] Though the courts often declare that great respect is due to the interpretation of the administration, and sometimes even that, when long continued, it "must be regarded as absolutely conclusive"—United States *v.* Hill, 120 U. S. 169 (1887)—the actual results of the decisions justify the assertion that this is merely a presumption, which serves as a convenient crutch to aid the courts when they desire to sustain the

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statute provided that no service should be regarded as sea service unless performed at sea under the orders of the department, the regulations of the department declared service on practice vessels in harbors and inlets to be shore service. The court holds that such service was in fact performed at sea, within the meaning of the statute, and that the regulations of the department could not convert it into shore service.

The authority of the secretary to issue orders, regulations and instructions, with the approval of the president, in reference to matters connected with the naval establishment, is subject to the condition necessarily implied, that they must be consistent with the statutes which have been enacted by Congress in reference to the navy. He may, with the approval of the president, establish regulations in execution of, or supplementary to, but not in conflict with, the statutes defining his power or conferring rights upon others.[1]

Finally, the regulations must relate to matters which the court regards as "mere details." As to what is a mere detail and what relates to the substance of the result sought by the legislation, the courts are more critical in criminal prosecutions than in civil controversies. It would seem that some regulations are considered sufficiently valid to support acts done under them, and therefore, in a sense, "have the force of law" and are "prescribed by law," and yet are not regulations "prescribed by law" when it is sought to base upon them a

contention of the administration, but which is never permitted to fetter them when inclined towards an opposite conclusion. In Houghton *v.* Payne, 194 U. S. 88 (1904), the court sustained the ruling of the postmaster-general classifying publications in the Riverside Literature Series as books, although for sixteen years his predecessors had classified them as periodicals and Congress, though often urged by the department to amend the statute, had declined to do so. "We regard publications of the Riverside Literature Series as too clearly within the denomination of books to justify us in approving a classification of them as periodicals, notwithstanding the length of time such classification obtained. . . . It is well settled that it is only when the language of the statute is ambiguous and susceptible of two reasonable interpretations that weight is given to the doctrine of contemporaneous construction. Contemporaneous construction is a rule of interpretation, but it is not an absolute one. It does not preclude an inquiry by the courts as to the original correctness of such construction. A custom of the department, however long continued by successive officers, must yield to the positive language of the statute."

[1] 120 U. S. 46 (1887).

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criminal prosecution under a statute providing penalties for "failure to do the things required by law."[1] In the case cited, a *wholesaler* in oleomargarine was indicted for failure to keep such books as were prescribed by the regulations. The statute required *manufacturers* to keep such books as the department might prescribe but made no such requirement as to *wholesalers*. The court seemed to regard the departmental regulations specifying the books to be kept by wholesalers as authorized by the general power to prescribe regulations, but held that the statute did not with sufficient distinctness make the failure so to do a criminal offence. In another case,[2] however, where the statute required packages of oleomargarine to be marked and branded as the commissioner of internal revenue should prescribe, and provided a penalty for packing oleomargarine in any manner contrary to law, it was held that the criminal offence was "fully and completely defined by the statute," and that the designation by the commissioner of the particular marks and brands to be used was a "mere matter of detail." The distinction between this and the Eaton case was said to be that the requirements of the department there related to matters which were in no way referred to in the various sections of the statute prescribing the duties resting upon manufacturers or dealers in oleomargarine, while here the statute expressly required the acts to which the regulations referred.

Two cases more difficult to distinguish have been decided in the lower federal courts. In the earlier of these cases[3] the statute authorized the secretary of war to make regulations to protect the navigation of rivers, and provided that violation of the regulations should constitute a misdemeanor. The secretary made a regulation as to the speed of vessels. The court held that the secretary did not make any act punishable, but merely promulgated a rule—that it was the statute which made the act punishable. In a later case[4] the statute authorized the

[1] United States *v.* Eaton, 144 U. S. 677 (1892).

[2] *In re* Kollock, 165 U. S. 526 (1897).

[3] United States *v.* Breen, 40 Fed. 402 (1889).

[4] United States *v.* Matthews, 146 Fed. 306 (1906).

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secretary of the interior to make regulations as to the occupancy of certain public lands, the violation of which was to be punished as provided in another statute. The regulations forbade sheep-grazing without a permit. The court held that the grazing of stock had been prohibited by no congressional act, that the prohibition rested entirely on the regulation of the secretary and amounted to an unauthorized exercise of legislative power, since it was the secretary who had designated what should constitute the crime. It would seem that in the earlier case it might have been said as easily that excess of speed was prohibited by no statute, and that the secretary alone had designated what should constitute the crime.

The decisions on this topic cannot be reconciled on any line of general principle. In the last analysis the distinctions are those of degree. A test which may prove helpful is to ask whether the requirements of the regulations should clearly have been anticipated from a reading of the statute. It is clear that the statute need not state in detail every circumstance or contingency under which an act prohibited by law shall constitute a criminal offence. Thus a defendant may be punished under a statute penalizing false swearing, where the oath in question was taken before a local land officer in a contest in respect to the validity of a homestead entry, as prescribed by departmental regulations, although such proceedings in a contest as to homestead entries were not specifically authorized by any statute.[1] This was said to be, not a case where the defendant was punished for the violation of a departmental regulation, but merely an instance where the regulations provided the place, occasion and opportunity for the defendant to violate the statute against perjury. In another case[2] the defendant was punished for false swearing in an affidavit before a state magistrate, where such oath was prescribed by a departmental regulation issued under general authority to "adjust and settle claims," although no express authority was given by any federal statute to any state magistrate to administer such an oath,

[1] Caha *v.* United States, 152 U. S. 211 (1894).

[2] United States *v.* Bailey, 9 Peters (U. S.) 238 (1835).

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and the court doubted whether a state magistrate could be compelled by any federal authority to administer an oath.

3. *Effect of the failure of the administration to take action*

Although in the Campbell case the Supreme Court declared that the administration may not, by disregard of its own regulations, withhold the action which follows by law from the compliance of an individual therewith,[1] it may defeat a right conditioned on compliance with regulations by its failure to make any regulations whatever. Thus, where a statute was construed as granting, not a right *in præsenti* to all persons who might after its passage use alcohol in the arts, but a right conditioned on use in compliance with regulations to be prescribed, the court regarded the legislation as incomplete until regulations were made to fill in its details, in the absence of which the right of the manufacturer could not so vest as to create a cause of action by reason of the unregulated use.[2] The comment on the Campbell case indicates that the decision there would not have been different had it involved the failure of the department to make regulations rather than its failure to comply with regulations made. For the court observed that in that case the right to the drawback depended on the statute and not on the secretary's regulations, which related merely to the ascertainment of the amount. Hence there the inaction of the secretary was immaterial, and the drawback must be paid whether ascertained under his regulations or not, where the amount could be proved to the satisfaction of the court as completely as if every reasonable regulation had been duly observed. The distinction between the statute in the two cases was said to be that one required that the thing itself should be done under official regulations; the other, merely that the proof of the doing of the act should be made in the manner prescribed.

It must also be true that no one may be punished for the violation of regulations which have not been made. If authority

[1] Campbell *v.* United States, 107 U. S. 407 (1882); *cf.* part i of this study, *loc. cit.* p. 231.

[2] Dunlap *v.* United States, 173 U. S. 65 (1899).

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be necessary to establish so self-evident a proposition, it may be inferred from United States *v.* Randall,[1] where failure to comply with the command of a statute, that masters of vessels arriving in port should repair at once to the office of the chief officer of the customs, was held excused by showing that such officer had no office and thereby made performance impossible. It was declared in the opinion, however, that the mere failure of the officer to exact compliance with the statute would not excuse the failure of the master to comply therewith.

Where such failure to exact compliance is partial only, as where regulations are promulgated that do not meet the full requirements of the statute, compliance with the regulations is not compliance with the statute for the purpose of acquiring any right.[2] But it should not follow from this that a penalty could be imposed for non-compliance with the law, where there was full compliance with the regulations. This would in effect place on the individual the burden of himself contriving regulations which would meet the demands of the statute. In a suit for a penalty it should be held that he has the same right to assume the validity of the regulations which seems to be accorded when the question arises in a suit between individuals.[3]

If the failure of an officer to require compliance with a statute cannot excuse complete non-compliance, it would follow that non-compliance with administrative regulations could not be excused by any waiver of their requirements on the part of a subordinate official. It might be argued that, if the officer who makes the regulation cannot himself disregard it to defeat the right of an individual,[4] he cannot authorize the individual to disregard it and thereby escape from a duty or from the imposition of a penalty for its non-performance. Knowing his duty, he might be held to accept any favor at his peril. But where the regulations do not relate directly to the duties or the rights of individuals, but pertain merely to the orderly transaction of

[1] 1 Sprague, 546 (District Court of Massachusetts, 1853).

[2] Merritt *v.* Cameron; *cf. supra*, p. 38.

[3] La Bourgogne; *cf. supra*, pp. 38, 39.

[4] Campbell *v.* United States, 107 U. S. 407 (1882); *cf.* part i, *loc. cit.* p. 231, and *supra*, p. 43.

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the business of the department, it seems that they may be waived by the authority of the one who promulgated them, either expressly or by the approval of a transaction which disregards them.[1]

Where the right is conditioned, not on the making of a regulation or an administrative finding of compliance therewith, but on the ascertainment of some state of facts whose existence is named as a condition under which the statute is to become operative, the executive ascertainment is requisite to the creation of the right. This was held in Bong *v.* Campbell Art Company,[2] where the action of the president was held a condition precedent to the right of an alien to the benefits of a copyright act, whose provisions were to be applicable only to those aliens whose governments were declared by the proclamation of the president to have granted corresponding privileges to American citizens. From the doctrine of the courts with respect to judicial control over acts in their nature diplomatic or political,[3] it clearly follows that such proclamation rests entirely within the discretion of the executive.

But where the individual is aggrieved by the failure of the administration to adjudicate the facts relating to his particular case, he may, as in the Campbell case,[4] establish his right before the court. Thus, where the secretary of the interior failed to ascertain what was swamp land and to furnish the state with notice, under a statute of Congress construed to confirm a present vested right in such lands, it was held that the land nevertheless belonged to the state when the facts existed under which it was to be entitled, and that if the secretary would not determine the facts they could be determined by the court.[5]

There are, however, numerous instances where the court construes the statute to mean that the determination or adjudi-

[1] Indian Regulations, 3 Comptroller's Decisions, 218 (1896). Cited in Wyman, Administrative Law, section 4.

[2] 214 U. S. 236 (1909).

[3] Jones *v.* United States, 137 U. S. 202 (1890). Luther *v.* Borden, 7 Howard 1 (1848).

[4] Cf. part i, *loc. cit.* p. 231, and *supra*, p. 43.

[5] Railroad Company *v.* Smith, 9 Wallace, 95 (1869).

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cation of the department is the exclusive method of establishing the individual right.[1] It was held in United States *v.* McLean[2] that the right of a postmaster to an increase of salary was conditioned on a re-adjustment by the postmaster-general and that no suit could be maintained in the absence of such re-adjustment. By a strictly logical inference it was decided in United States *v.* Verdier[3] that a postmaster must pay interest on a judgment against him in favor of the government, although at the time it was rendered the government was equitably his debtor, as became established by a subsequent re-adjustment of the postmaster-general. Interest on the amount found to be due him was not allowed to begin from the time of the transaction on which it was based, because the debt was held to have come into existence at the time of the re-adjustment.

But in the McLean case the court suggested that, while it could not perform executive acts or treat them as performed when they have been neglected, it might by *mandamus* compel the executive to do his duty. And where the duty to promulgate regulations is absolute, their promulgation may be constrained by *mandamus*, although the court could not dictate their provisions. Under some statutes, however, the administration seems to be treated as vested with discretion to decline to promulgate regulations when in its judgment it is inadvisable.[4]

4. *Finality of administrative orders and adjudications.*

It is clear that the power of the administration to issue orders or regulations does not necessarily imply the validity of the action taken. When the validity of administrative action is examined in the course of judicial proceedings, the question of the conclusiveness or finality of the action taken may perhaps be said to be before the courts, whether it be an administrative regulation or an administrative determination or adjudication that is under consideration. But only in the latter class of cases may the court itself perform the task entrusted to the administration by substituting an adjudication or determination of

[1] *Cf. supra*, pp. 43, 45.
[2] 5 Otto, 750 (1877).
[3] 164 U. S. 213 (1896).
[4] Dunlap *v.* United States, 173 U. S. 65, at p. 75.

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its own for that of the administration. The use of the term "judicial review" is sometimes misleading. It seems to be loosely applied, not only to the inquiry whether power to act is lawfully vested or exercised, but also to the process of nullifying the administrative action or of substituting a judicial determination in its stead.

Judicial review of administrative action is always possible, if we mean that the courts may always inquire as to its validity. But the courts have themselves established the rule of law that in many instances, where power to act is lawfully vested, they will assume, without examination of the evidence, the correctness of the administrative determination. This doctrine obtains with respect to administrative ascertainment of facts in determinations relating to the assessment of property for taxation,[1] the admission of aliens[2] or imports,[3] reception or classification of mail matter[4] and disposition of the public lands.[5] And there is a growing tendency to hold officers not answerable in damages for what the court adjudges erroneous findings of facts in proceedings for protecting the public health, which result in partial deprivation of liberty or property,[6] or possibly, in total destruction of property where the owner failed to take advantage of some opportunity to secure judicial review before the administrative determination was finally executed.[7]

These decisions are based primarily upon a recognition of the dictates of governmental necessity, but partially also upon a

[1] Hilton *v.* Merritt, 110 U. S. 97 (1884).

[2] United States *v.* Ju Toy, 198 U. S. 253 (1905).

[3] Buttfield *v.* Stranahan, 192 U. S. 470 (1904).

[4] Public Clearing House *v.* Coyne, 194 U. S. 497 (1904). Bates and Guild Company *v.* Payne, 194 U. S. 106 (1904). Here, in connection with the classification of mail matter, it was said: "Where there is a mixed question of law and fact, and the court cannot so separate it as to show clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive."

[5] Smelting Company *v.* Kemp, 104 U. S. 636 (1881). *Cf. American Political Science Review*, vol i, pp. 583-607.

[6] Beeks *v.* Dickinson County *et al.*, 131 Iowa 244 (1906). Valentine *v.* Englewood, 76 N. J. Law 509 (1908).

[7] Van Wormer *v.* The Mayor, 15 Wendell (N. Y.), 262 (1836). Raymond *v.* Fish, 51 Conn. 80 (1883). *Cf. Harvard Law Review*, vol. 24, pp. 441–459.

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realization that when the courts reverse an administrative adjudication they assume a burden which the statute places on other shoulders. For if the adjudication of the administration is set aside, a new decision must be reached by the courts. In annulling a regulation, on the other hand, the task of the court is completed.

There is no doctrine that an administrative regulation is immune from the power of the courts to review. It is true the courts themselves, in declining to revise administrative adjudications, frequently assert that the administrative action is not subject to judicial examination and revision, but this limitation upon their reviewing power is self-imposed, and it may be discarded whenever they deem it prejudicial to the interests which the Constitution was designed to protect. In the Monongahela Bridge case[1], Mr. Justice Harlan notes that "learned counsel for the defendant suggests some extreme cases, showing how reckless and arbitrary might be the action of executive officers," and makes reply as follows:

> It will be time enough to deal with such cases as and when they arise. Suffice it to say, that the courts have rarely, if ever, felt themselves so constrained by technical rules that they could not find some remedy, consistent with the law, for acts, whether done by government or by individual persons, that violated natural justice or were hostile to the fundamental principles devised for the protection of the essential rights of property.

THOMAS REED POWELL.

COLUMBIA UNIVERSITY.

[1] Monongahela Bridge Company *v.* United States, 216 U. S. 177 (1910). In this case Mr. Justice Harlan declared: "It was not for the jury to weigh the evidence and determine, according to *their* judgment, as to what the necessities of navigation required, or whether the bridge was an unreasonable obstruction. The jury might have differed from the secretary. That was immaterial; for Congress intended by its legislation to give the same force and effect to the decision of the secretary of war that would have been accorded to direct action by it upon the subject." The function of the court was held to be limited to ascertaining whether the executive officers conform their action to the mode prescribed by Congress.

Though the courts are often deaf to the plea that the administrative decision is erroneous, they will always entertain a complaint as to the procedure by which that decision was reached. Chin How *v.* United States, 208 U. S. 8 (1908). *Cf.* 22 *Harvard Law Review*, 360.

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THE TARIFF BOARD'S REPORT ON WOOL AND WOOLENS

THE Tariff Board's report on *Wool and Manufactures of Wool* presents data on so many phases of the industry that any one of a half-dozen different topics might well be selected for analysis and discussion. The report is published in four volumes with a total of 1222 pages, and there is, besides, a general index of 58 pages. It consists of five main parts and a short summary of "Findings." Part I, "Glossary on Schedule K," presents an analysis of the duties and of the imports and exports of the various commodities affected and a statistical survey of the industry at home and abroad. Part II deals with raw wool: its cost of production, its shrinkage, and a survey of the conditions under which it is produced in different countries. Part III is a study of the cost of production of tops, yarns and fabrics. Part IV consists of a report on the ready-made clothing industry. Part V deals with labor conditions, wages and the efficiency of labor and machinery in the United States.

The main object of the inquiry conducted by the board was to furnish a basis for the adjustment of duties, and it proceeded on the theory enunciated in the Republican platform of 1908, that protective tariff duties should be based on differences in comparative costs of production at home and abroad. Accordingly, an analysis of its report should seek to discover to what extent it has succeeded in furnishing definite bases for tariff revision, whether its methods are above reproach, and what bearing the results have on the cost-of-production theory of tariff rates. For the purposes of such an analysis, Parts II and III, dealing with the costs of production of raw wool and of manufactures of wool respectively, are the most important, and these will be discussed first and in some detail. The other parts will be described more briefly, but fully enough to acquaint the reader with the general method and the scope of the investigation.

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I

Section 1 of the volume on raw wool, after briefly describing the conditions under which wool is raised in the principal wool-growing countries, proceeds to a study of comparative costs of production in the United States, Australia and South America; section 2 deals with wool shrinkages and the methods of levying duties; section 3, with carpet wools, practically all of which are imported. In the form of addenda are presented special reports on wool-growing in Great Britain, Canada, Australasia, South America, South Africa and in different sections of the United States. Although valuable material is to be found throughout the volume, the first two sections contain all the data of service in the determination of tariff duties.

The Tariff Board presents two possible methods of determining the cost of a pound of wool: (1) by distributing total costs between wool and mutton[1] in proportion to the receipts from each; and (2) by considering wool the chief product and mutton the by-product, subtracting mutton receipts from total operating costs, and designating the remainder as the cost of wool. The first method, to which I shall revert later, the board discards on the ground that "any change in the relation between the receipts from wool and the receipts from mutton would change their respective costs of production."[2] As regards the second method, the board explains that when the receipts from mutton equal the operating costs, the cost of producing a pound of wool as found by this method is nothing; and that when the receipts from mutton exceed the operating costs, it is less than nothing. It concludes, therefore, that this method is "inadmissible because the cost of producing a pound of wool, thus determined, varies with the relative importance of the receipts from wool and mutton"; which is precisely the reason given for discarding the first method. The report goes on to explain, however, that "when wool is the chief source of income and the receipts from mutton are merely incidental and relatively small, this method is approximately correct; but as the receipts from

[1] "Mutton" is used throughout to include all products other than wool.

[2] Report, p. 312.

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mutton become relatively more important, the degree of error increases, and when mutton is the chief source of income and the receipts from wool are merely incidental, the futility of the method is clearly apparent."

Consequently the board concludes that the cost of producing a pound of wool cannot be accurately determined, but that "this need occasion no concern, since the bearing of the receipts from wool on the returns from flock husbandry, as carried on in the region under consideration (the principal western sheep-growing states), can be ascertained and the object of this investigation can thus be accomplished." Accordingly, wool is considered

> the chief product, and the receipts from mutton are offset against costs. When the receipts from mutton are less than the total flock expense, the difference is called the "net charge against wool." When, on the other hand, the receipts from mutton are greater than the expense, the difference is the "net credit to wool." And this net charge against or net credit to wool, divided by the number of pounds of wool, is the "net charge against or net credit to a pound of wool."[1]

In defence of this method of procedure, the board informs us that "this net charge against or net credit to a pound of wool, taken in its relation to the net selling price of a pound of wool, is, normally, an index to the profit or loss represented by the entire operation."

It will be observed that this method is practically identical with the second method suggested by the board, but declared to be inadmissible on the ground that the cost of wool varies with the relative importance of wool and mutton receipts. There are, indeed, two slight modifications. These are, first, that when mutton receipts exceed total operating costs, the difference is considered a "net credit to wool" and is combined with the net charges to obtain a single figure called the "net charge against or net credit to a pound of wool." The second is that the results do not purport to represent the actual cost of wool, but rather a so-called "charge against" wool, which,

[1] *Ibid.* p. 313.

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taken in conjunction with the price of wool, furnishes an index to the profitableness of sheep-raising. Bearing in mind the object of the investigation, *i. e.* to determine comparative costs of wool-growing in this and foreign countries, on the theory that such data will furnish the basis for fixing a protective import duty on raw wool, let us examine the findings of the board in accordance with this method.

The points with which we are primarily concerned may be summed up in the following table:

	WESTERN STATES	AUSTRALIA	SOUTH AMERICA
Wool receipts, per head	$1.17	$1.31	$1.28
——, proportion of total receipts .	45.7%	58.7%	60.4%
Mutton receipts, per head	$1.39	$0.93	$0.84
——, proportion of total receipts .	54.3%	41.3%	39.6%
Total receipts, per head	$2.56	$2.23	$2.12
Total costs, per head	$2.11	$0.95	$1.15
Pounds of wool, per head	7.3 *lb.*	7.25 *lb.*	7.5 *lb.*
Net charge, per pound of wool . .	$0.10 to 0.11	$0.003	$0.04 to 0.05
Price, per pound of wool	$0.16	$0.18	$0.17

The figures in the next to the last line indicate that the net charge to a pound of wool is from ten to eleven cents in our western states, three-tenths of a cent in Australia, and from four to five cents in South America. In the case of the United States and South America, the net charges are not worked out exactly; from "10 to 11 cents" and from "4 to 5 cents" is the manner in which they are presented by the board.[1] In the case of Australia—and this is of peculiar significance—the three-tenths of a cent is worked out exactly from the other figures in the table. In no place does the board attempt to say just what the net charge is in Australia. In the "Findings of the Investigation" it states that "a charge of a very few cents per pound lies against the great clips of that region in the aggregate."[2] In the body of the report it says that there is "little, if any charge against the Australian."[3] This charge of three-tenths of a cent means, of course, that the receipts from mutton are practically sufficient to cover the entire cost

[1] Report, p. 350. [2] *Ibid.* p. 11. [3] *Ibid.* p. 350.

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of sheep-raising. It is barely possible that when the board discovered that the method it had adopted yielded a result of practically zero for Australia, it became skeptical of the value of its figures and attempted to shield itself by the use of the vague phraseology quoted above.[1]

The present duty on class 1 wool is eleven cents per pound "in the grease." The wool in this class is similar to our domestic clip, and forms by far the most important part of our imports, exclusive of carpet wools. If the net charge of 10 to 11 cents against a pound of wool, estimated by the board, is to be interpreted as the cost of producing a pound of wool, its findings would justify the present duty; for the net charge to a pound of wool in Australia, our principal competitor, is found to be practically zero. Because of the use that may be made of these figures in fixing the duty, the question whether they furnish a safe and adequate basis for this purpose is an extremely important one and deserves careful consideration.

Although this method of estimating costs or "net charges," by regarding wool as the principal product and mutton as a by-product, gives interesting and instructive results if used with caution and in conjunction with other facts, it is open to serious objections when the charge thus ascertained is proposed as a sole foundation for tariff rates. The objections are, first, that the net charge to a pound of wool is not a true cost at all; second, that if tariff rates are to be based on comparative costs, the

[1] The indefinite form in which the Tariff Board presents the results of its investigation has already led to a curious use of the figures. The Republican minority members of the Ways and Means Committee introduced, early in 1912, a wool bill, in which they attempted to make use of the board's data on wool costs. Peculiarly enough, they assumed that the net charge against wool in Australia was two and one-half cents a pound. Representative Hill, of Connecticut, explained before the House that this was assumed because the board in its report had said, on page 11, that the charge against wool in Australia was a very few cents, but that it was less than the charge on South American wool, the latter being given as four or five cents a pound. Therefore the authors of the bill had guessed at two and one-half cents. They evidently failed to discover the statement on page 350, quoted above, or to work out the exact charge as is done in the table. If they had used three-tenths of a cent instead of two and one-half cents, the computation would have yielded a duty four or five cents a scoured pound higher than the one they presented in their bill.

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whole purpose of the inquiry is defeated if any other figure be substituted for cost of production; and third, that even as an "index of profit or loss" on the entire operation the net charge is defective, because (*a*) it must be compared with the selling price of wool, which in the United States is affected by the duty now levied, and because (*b*) the net charge varies as the proportion of receipts from wool and mutton vary, even though the profit on the entire operation remains the same.[1]

That the "net charge" is not a true cost is evident from the fact that for Australia it is practically zero. This result only means that in that country the receipts from mutton are sufficient to cover the cost of producing both wool and mutton. The method of applying receipts from by-products to total expenses, which is used in many lines of industry, is convenient, and leads to no great error when the by-product is truly a by-product. But in this case, wool and mutton are "joint products," *i. e.* they are of nearly equal value. The board's own figures, as given in the table above, show that the receipts from wool constitute only 45.7 per cent of the total receipts in our western states, 58.7 per cent in Australia, and 60.4 per cent in South America. In other words, the receipts from wool constitute less than half of the total in the western states, where wool growing is ordinarily considered the principal object of sheep husbandry! Compare this with the discussion in the report on page 312, where the board says that "as the receipts from mutton become relatively more important, the degree of error (in estimating costs by considering wool the principal product and mutton a by-product) increases, and

[1] This statement can easily be proved by comparing two hypothetical cases in which the net profits on the whole operation are the same:

	Case 1	Case 2
Receipts from wool	$1.00	$ .75
Receipts from mutton	1.00	1.25
Total receipts	2.00	2.00
Total cost	1.50	1.50
Net profit	.50	.50
Total cost less mutton receipts	.50	.25
Net charge to a pound of wool (5 pounds to a fleece)	.10	.05
Selling price of wool	.18	.18
Difference between net charge and selling price	.08	.13

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when mutton is the chief source of income and the receipts from wool are merely incidental, the futility of the method is clearly apparent." According to this reasoning, if the net charge is to be considered a cost, the error is greater for the western states than for Australia or South America.

It must be concluded that the net charge does not represent the cost of producing a pound of wool. This, of course, coincides with the board's statement, that "we cannot obtain a result which can accurately be termed the cost of producing a pound of wool."[1] But the report tells us that the object of the investigation can be accomplished by using the method adopted; and thus we are led to infer that the tariff can be equitably adjusted by using comparative "charges against" wool instead of comparative costs. Whether the board considers that these net charges are practically equivalent to costs, or that it is offering some other basis for the determination of tariff duties, is not clear. Certain passages seem to indicate that it considers them practically the same as costs.[2] Surely President Taft so interpreted the results of the investigation when, in his special message of transmittal and recommendation of December 20, 1911, he said: "It is found, however, that, taking all varieties in account, the average cost of production for the whole American clip is higher than the cost in the chief competing country by an amount somewhat less than the present duty." Herein lies the danger: the board's net charge is by no means the same as the cost of production,[3] and yet it has already been construed as such by the president, and used as the basis of proposed legislation. The confusion between these two concepts is undoubtedly the weakest point in the

[1] Report, p. 312.

[2] *Cf.* the Tariff Board's letter of transmittal: "relative costs of production have been developed as closely as possible in the case of the leading clips. . . ." Report, p. 7. The wording on p. 10, under the title "Wool Costs" in "Findings of the Investigation," is confusing, and surely might lead one to consider that the "net charge" could be construed as the cost of production. *Cf.* also subheading on p. 355 and closing paragraph on p. 377.

[3] How far the net charge deviates from a true cost will be more clearly brought out below, in discussing the possible use of the method of apportioning costs in proportion to the receipts from wool and mutton.

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whole report. But the data collected by the board are valuable; and the question arises whether some more satisfactory means of interpretation might not have been found.

The problem of cost accounting in the case of joint products is indeed a difficult one, because, when two or more products result from the same productive operation, the various cost elements are not directly allocable to the different products. Light is thrown on this problem by reference to the fundamental relationship between cost of production and value. As commonly stated, the value of competitive and freely reproducible commodities tends, in the long run, to conform to the cost of production. (It is not necessary, for our present purpose, to consider the various refinements of the doctrine.) This applies strictly, however, to single commodities, of which the cost is readily ascertainable. In the case of joint products, the joint cost is still the principal determinant of joint value; but it can not be said that the value of any one of the products alone is determined by its separate cost of production, but rather by demand. Therefore, if there is any relationship at all between the value of one of a group of joint products and its separate cost of production, it follows that value is the determinant and cost of production the result. Applying this conclusion to the wool and mutton question, the cost of production of either alone can be determined only by prorating the total cost in the same ratio that the values or receipts bear to each other. This is the first method suggested by the board. It was discarded on the ground that changes in value of wool and mutton result in changes in their respective costs of production—an objection which can be urged with equal force against the method adopted. But since (if any relationship exists at all) value is the cause and cost the result, it follows that costs *ought to* vary as values do, and the objection urged by the board loses effectiveness.

Costs determined by this apportionment method would be, it is true, only bookkeeping costs, but they might serve some useful purpose as an approximate measure for the determination of protective duties, if there were no better reason for abandoning the method than that advanced by the board. The real

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reason why this apportionment method, if applied to wool growing in the United States, would be of little service in determining tariff duties, is that the receipts from wool, which form the basis of apportionment, are affected by the present duties on raw wool. The board displayed an inadequate grasp of the problem in discarding the apportionment method for a reason that applies with equal force against the method adopted, and in failing to recognize, or at least to state, the real reason why that method is defective.

Since the two methods suggested by the board are apparently the only possible ones; since the one furnishes no true cost of production and the other is unusable because of the effect of the present duties; and since, furthermore, the price of wool alone is not determined by its separate cost of production—the board seems to have undertaken an impossible task. In other words, the cost-of-production theory of tariff rates fails in the case of such a commodity as wool. Neither can relative prices be used as a basis for tariff rates, because domestic prices are raised by the existing duties. The fixing of duties on wool must necessarily be largely a matter of guesswork. Cost estimates furnish some basis for guessing; but the "net charge to a pound of wool" method leads to absurd results and is therefore worse than none at all. The apportionment method might have been used for Australian and South American costs, and some allowance might have been made for present duties in determining costs in the United States. This latter method yields an average cost of 7.5 cents for Australian wool and 13.2 cents for our western wool, *without making allowance for the effect of existing duties.* Even with this defect, it is probable that these results, reached by the method discarded by the board, more accurately represent the relative disadvantage of the American sheep-raiser in the western states than the results presented in the report.

The results of the board's inquiry into sheep-raising in Ohio and into the production of cross-bred wools in other eastern states only emphasize the unsatisfactory character of its method. On the other hand, the discussion of wool shrinkage (which follows the cost inquiry) is satisfactory: it furnishes fairly

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definite information, and information that is necessary if the duty is to be levied on the scoured content of wool, as the board suggests. This suggestion did not originate with the board; but the report points out so conclusively the discriminatory workings of the duty as now levied on greasy wool, and demonstrates so authoritatively the practicability of levying it on the scoured content,[1] that the action of the board in this matter is of distinct importance. It is interesting to note, however, that nowhere in its cost analysis does the board attempt to introduce the element of shrinkage, so as to afford a definite foundation for the fixing of the duty on a scoured basis.

The rest of the volume on raw wool furnishes general information on wool growing in different countries, but throws no new light on the question of tariff duties.

II

In the study of manufacturing costs, the Tariff Board secured data from 174 mills in the United States, representing over two-thirds of the productive capacity of the country—a fact which indicates the willingness of manufacturers to coöperate in the investigation. After presenting a most valuable basis for the adjustment of compensatory duties, in accordance with its recommendation that the duties on raw wool be levied on the scoured content, the board submits the cost schedules used in collecting its data; proceeds to a study of the cost of making tops (combed wool), yarns and fabrics, and of building and equipping woolen and worsted mills; and then discusses the method of assessing duties. Over 100 pages of the report are thereafter devoted to a study of relative wages in the United States and foreign countries. The board nowhere presents its findings in the form of duties which it believes would equalize costs in this and other countries. These have to be ascertained from the cost figures submitted; and the value of the report depends largely on the possibility of so doing.

[1] If a specific duty on the scoured content should be adopted, it would, of course, be open to the same objection that is raised against all specific duties. It would remove the discriminations due to varying shrinkage, but not those due to varying quality or fineness.

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The board describes very frankly the obstacles that it encountered in its search for trustworthy cost figures. The principal difficulties were these. First, there are so many grades of tops, yarns and fabrics produced, even in a single mill, that it is not only difficult to determine the cost of a single grade in an individual American mill, but it is hard to find strictly similar grades in foreign mills with which exact comparisons can be made. Second, costs vary enormously from month to month according to differences in volume of output. In the case of tops, the board found that "for a six-months period in one mill the average cost of production for all tops was only 4.28 cents per pound, while for another six-months period in the same mill running upon practically the same quality of tops the actual average cost was 9.37 cents a pound."[1] Despite these difficulties, the board believes that, by estimating costs on a full-capacity basis, it has been able to furnish fairly usable ratios between costs in the United States and foreign countries, particularly England.

In the manufacture of tops, the board concludes that American conversion costs are about 80 per cent greater than foreign[2]; and that the conversion costs of yarns are about twice as high in the United States as abroad.[3] The necessity of ascertaining conversion costs, exclusive of material costs, is obviously due to the fact that material costs in the United States are largely affected by the existing duties on raw wool. Although the board had this definitely in mind in its calculations, it does not present adequate information as to the proportion of conversion cost to total cost, nor as to *actual* conversion costs and total costs. In the case of yarns, for example, the information that American conversion costs are twice as high as foreign is of little service in determining an *ad valorem* duty that would offset the lower cost abroad, because such a duty has to be based on the total foreign cost or price. It is necessary, therefore, to know the total foreign cost of yarn, including material cost; then, by adding the difference in actual conversion costs of yarn to the difference in actual conversion costs of tops (in

[1] Report, p. 641. [2] *Ibid.* p. 645. [3] *Ibid.* p. 650.

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the case of worsted yarn), it would be possible to figure out a duty. To be sure, the actual conversion costs of a few yarns are given, but the information with regard to tops is rather meagre. The total foreign cost of tops and yarns is not given, although prices are presented. From these data it is possible to make estimates; but they would necessarily be only approximate, and it is questionable whether different persons working independently would arrive at figures sufficiently close to be of conclusive value. It would appear, then, that the board has not presented sufficiently definite figures to make it possible to work out duties on tops and yarns with any degree of accuracy.

In the study of cloth costs, the board, because of the great variation in quality and character of fabrics, found it necessary to resort to a study of estimated costs of specific samples of domestic and foreign fabrics. Accordingly, certain details of cost of fifty-five samples are presented, American costs being compared with English and, in some cases, with French and German costs; and certain details of cost of fourteen additional samples are given, in which only American and German costs are compared. These figures are indeed enlightening, but practically the same difficulty arises in attempting to use them for the determination of duties as in the case of yarns. Be it noted also that the fabric costs are expressed in units of *yards* of cloth, whereas the top and yarn costs are based on *pounds*.

One of the simplest cases is sample no. 36, a men's blue serge, of which both warp and weft are 2-ply worsted yarn no. 24, and for which 1.35 pounds of yarn are required to make a yard of cloth.[1] The following data are presented:

	UNITED STATES	ENGLAND
Cost of yarn	$1.256	$0.947
Conversion cost	0.30	0.154
Total cloth cost	1.556	1.10

The relative costs of yarn are of no value, because in the American cost is included the cost of raw wool enhanced by the existing duties. For the same reason the comparative total

[1] Report, p. 674.

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costs are of no avail in determining a duty that would equalize costs. One thing that the comparative total costs do show, however, is that the present duty is much higher than necessary. This duty at present is 44 cents plus 55 per cent, which, basing it on the English *cost* rather than the English *price*, which is not presented, gives a total duty of $1.045! To determine the actual duty necessary, it is essential to know the difference in conversion costs, not merely from yarn to cloth, but from raw wool through tops and yarns and finished cloth. This can be but roughly estimated from the board's figures. It is found on page 650 that the conversion cost of 2/24 worsted yarns is about 10.86 cents per pound in the United States (excluding interest) and 5.6 cents in England (including interest), a difference of 5.26 cents. So far as can be made out from the report, the conversion cost of tops in this country would probably be about three cents per pound higher than in England. Adding these differences together and making allowance for the fact that it requires 1.35 pounds of yarn to make one yard of cloth, and about 1.5 pounds of tops to make 1.35 pounds of yarn, the total conversion cost in the United States on this sample would be in the neighborhood of 26.2 cents, or only about 24 per cent of the cost of the finished fabric in England.

It will be seen that this calculation involves a good deal of estimating and reference from one part of the report to another. The result obtained can not be considered conclusive, although the case cited is perhaps the simplest to be found, because both warp and weft yarns are of the same count. In most of the samples on which cost analyses are presented, the warp and weft yarns are of different counts, and it becomes practically impossible to reach any conclusions whatever. A more complete analysis of yarn costs would have remedied the difficulty. Taken all in all, it must be concluded that the report fails to present sufficiently analyzed costs to serve as an adequate basis for determining duties, and that the data presented are not conveniently assembled. No wonder the Ways and Means Committee felt safe in declaring that the Tariff Board report justified the low duties of the Underwood Wool Bill, while at the same time the minority members of the

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committee presented a bill, "based on the Tariff Board data," in which the duties are about twice as high as in the Underwood Bill!

It seems to the writer that the failure of the board to arrive at definite differences in cost is not conclusive evidence that the comparative-cost idea of tariff rates is unsound, except in the case of joint products. Undoubtedly those who first advanced the theory expected too much; but, while it is perfectly obvious to anyone who has the slightest knowledge of industrial conditions that it is impossible to determine to a cent the difference in cost of any single commodity in two different countries, approximate results may be procured which will be of inestimable service in tariff revision. For example, if in the case of commodities bearing duties of from 90 to 200 per cent, as in the wool schedule, it can be shown that the differences in costs range only from 30 to 50 per cent, a great step has been taken toward a more reasonable adjustment. Again, if in the case of commodities bearing duties of from 30 to 50 per cent, as in the cotton schedule, it can be shown that the American cost on many of these commodities is as low as, or even lower than, the cost in the principal competing country, a very great service has been rendered. This is exactly what the Tariff Board's report on cotton manufactures has demonstrated with regard to plain cotton fabrics; and it has thereby proved that even from the protective standpoint no duties are needed on these goods. In this connection it is interesting to note that, although the board found that the mill price of plain cotton fabrics is as low in the United States as in England, the price to the ultimate consumer, on the other hand, is much higher in this country—which means that the duties on this class of fabrics give protection, not to the mills themselves, but to wholesalers and retailers. The findings of the board in this matter are fairly good evidence that an investigation of comparative costs may yield very serviceable results.

Accepting the protective policy—be it good or bad—as a fixture in American economics and politics, and realizing that the laboratory method of experimentation is impossible in the case of tariff duties under existing political conditions, it is

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apparent that we need a more effective method for securing just and reasonable duties than we have had in the past. Without enumerating the various lines of investigation which would be useful in securing such rates, it is safe to say that a study of comparative costs should be included in the case of a large majority of the commodities which we wish to protect; and, unless our whole theory of the relation between costs and competitive international values is unsound, the efficacy of the cost-of-production principle is limited only by the exactness with which such costs can be determined. To do a great deal better than we have been doing in the past, it is only necessary to secure approximately accurate cost figures; for experience with the cotton and wool schedules demonstrates that cost ratios, varying within rather wide limits, furnish the basis for a much more intelligent consideration of the tariff problem. The Tariff Board's failure adequately to analyze and assemble its cost data is not sufficient proof that the method should be abandoned; more time and skill expended upon the investigation would undoubtedly have yielded more definite results.

III

The so-called "Glossary" contains a vast store of valuable facts admirably arranged; and a careful reader will obtain from it the basic information necessary to an understanding of the workings of the exceedingly complicated Schedule K. It begins with a consideration of the paragraphs of the Tariff Act which provide for duties on the raw materials of the industry, *viz.* raw wool, wastes, shoddy, noils, rags *etc.*, and then passes to the paragraphs relating to manufactures of wool. Next it gives a detailed description of wool-growing in various countries; and it closes with an account of the growth of wool manufactures and a presentation of the most recent statistics for the United States and foreign countries. There are also two appendices: the first deals with the duties on wool and wool manufactures in foreign countries, and the second presents a comparative statement of duties in the United States since 1789.

Nothing contained in the glossary will aid in the actual deter-

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mination of duties; but many facts which have an important bearing on the whole question of the tariff on wool and woolens are discussed in an eminently fair and dispassionate manner. An admirable account of the origin, theory and workings of the present compensatory duties is given, and the injustice of basing the duty on the theory that it requires four pounds of greasy wool to make a pound of cloth is pointed out. We are told that the compensatory duties "are not only unequal in their operation, but they cannot be otherwise."[1] The fact that the duty is absolutely prohibitive on the cheaper grades of goods is clearly shown; and it is also shown that a compensatory duty is here provided where none is necessary. The report says that "the most noticeable fact shown in Table 80 is that the cheaper the goods, the higher the duty."[2] Quotations of this sort might be multiplied to show the unhesitating way in which the report states facts which may be and are being used by the bitterest opponents of Schedule K.

On the other hand, other facts are presented which are more favorable to the manufacturers, and which expose many popular misconceptions with regard to certain features of the tariff and of the woolen industry. Shoddy is declared to be undeserving of its bad reputation[3]; it is in reality pure wool, fully as warm as new wool, and deficient only in wearing qualities. Its use has made possible relatively good clothing at very cheap prices. Census figures are reproduced showing that during the past twenty years the proportion of new wool used by wool manufacturers has increased substantially, the proportions of both shoddy and cotton having fallen off to a noteworthy degree. This proves that it is unsafe to argue that our high tariff leads to a greater use of inferior materials. Again, the report attacks the oft-repeated argument that there is gross discrimination in favor of the worsted manufacturer as against the carded-woolen manufacturer, in that the duty on class I wool is doubled when imported "washed," whereas the duty on class II wool remains the same whether imported "in the grease" or "washed." This argument, which has furnished the text for

[1] Report, p. 104. [2] *Ibid.*, p. 124. [3] *Ibid.*, p. 69.

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considerable speech-making in Congress, is founded on the assumption that the carded-woolen branch uses class 1 wool exclusively and the worsted branch class 11 exclusively. The report shows that, although the worsted industry does consume all of the comparatively small amount of class 11 wools imported (18,000,000 pounds in 1909), it also uses vast quantities of class 1 wool; in fact, that of the 150,000,000 pounds imported in 1909 the carded-woolen branch used only 14,000,000 pounds, and the worsted branch the remainder. The conclusion reached with regard to class 11 wools is that "their relative importance as a raw material is comparatively insignificant" and that "while in so far as the worsted industry uses class 11 wools, the absence of the double duty on them, when washed, is of some advantage, the double duty on class 1 wools now affects the worsted more than it does the woolen industry." [1]

IV

The principal object of the investigation of the clothing industry was to study costs of manufacture and to show the proportion of cloth cost to total cost and to selling price—factors which have a very direct bearing on the relation between tariff duties and the prices paid by consumers for clothing. The main features of the ready-made clothing industry are briefly described. The inquiry covered the five leading centers—New York, Chicago, Baltimore, Philadelphia and Rochester. Costs were obtained on specimen garments, emphasis being laid on the standard three-piece sack suit. The investigation did not cover the tailoring industry; probably for the reason that tailor-made clothes form a very small proportion of the total, the rank and file of the people not being concerned with them. Costs are divided into (1) cloth cost; (2) total material cost (including findings); (3) conversion cost (labor and factory expense); (4) selling costs; (5) general expense.

For selected factories, with an annual output of $70,000,000 worth of clothing, the cloth cost (not including linings) in suits selling for less than eight dollars (wholesale) formed 47 per

[1] *Ibid.* p. 90.

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cent of the selling price; in suits selling from $8 to $15, 37 per cent; and in suits selling over $15, from 26 per cent to 34 per cent.[1] Including the cost of woolen linings with the cloth cost, the board concludes that "the average woolens cost of clothing may be estimated at about 40 per cent for the total value considered and about 45 per cent for the more popular grades of clothing sold."[2] Pursuing this analysis, actual costs are given for specimen suits, arranged first according to wholesale selling prices[3] and then according to the price of cloth used.[4] In suits selling from $9 to $10 wholesale, for example, the cloth cost varies from $2.83 to $4.56; in suits selling from $14 to $15, the cloth cost varies from $4.41 to $7.00. Using the price of cloth as a basis of classification and selecting typical instances, it is found that the wholesale selling price of suits made from cloth costing from 75 to 80 cents a yard varies from $5.85 to $8.49 per suit, and that the price of suits made from cloth costing from $1.16 to $1.20 per yard varies from $8.50 to $11.79 per suit.

Although the board says that the average price of garments rises with the price of the cloth used, yet one is struck by the great variations in prices of suits made from the same grades of cloth, and the great diversity in cloth costs of suits selling at the same prices. The retail prices used by the board are in all cases estimated at 50 per cent higher than the wholesale prices, and we are informed that about 25 per cent of the price paid by the consumer of ready-made clothing goes for woolens. In the detailed cost of certain sample suits, however, it appears that the cloth cost is less than 25 per cent of the retail selling price. For example, in a suit selling at retail for $23 and up, the total cloth cost is only $4.78.

The results of this investigation of the ready-made clothing industry are indeed significant from a tariff standpoint, in that they seem to indicate that the public has a vastly exaggerated idea of the influence of the tariff on the price of men's clothing. When it is realized that the cloth entering into a $23 suit costs

[1] Report, p. 860.
[2] *Ibid.* p. 861.
[3] *Ibid.* pp. 870 *et seq.*
[4] *Ibia.* pp. 876 *et seq.*

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less than five dollars, and that the wholesale price of such a suit is only about $16, it becomes pertinent to ask what effect the lowering of the duty on cloth would have on the ultimate price of the suit. Furthermore, the board made no analysis of retail prices, and merely estimated them at 50 per cent above the wholesale prices, whereas those conversant with the trade know that retail dealers often charge more than this, and that they frequently charge different prices for suits costing them the same. The board would have done well to investigate retail prices more carefully, because by far the greatest single element of the price to the ultimate purchaser is the amount claimed by the retail dealer, and on this element of cost the tariff on woolen goods has but little effect. The clothing manufacturer is apparently absolved from the charge of inordinately high profits; and, in spite of the lack of adequate data, it is evident that retailing methods are more directly responsible for the high price of clothing than the tariff can possibly be. Although the board has evidently tried to be fair and impartial, a careful scrutiny of the figures presented reveals the fact that the cloth cost evidently plays a smaller part in the determination of the retail price of a suit of clothes than one would infer from reading the text of the report.

V

The whole of Volume IV is devoted to a study of labor, wages, and efficiency of labor and machinery in the United States. It was found that in the establishments investigated 36.5 per cent of the whole number of employees were born in the United States and 63.5 per cent were foreign-born. Of the foreign-born, 55.3 per cent (or 35.1 per cent of all the employees) came from Italy and eastern and southeastern Europe. Natives, English and Germans were found to predominate in those processes requiring the most skill, Italians and others in those processes requiring the least.[1] Of all wage-earners investigated, 83.3 per cent had had no experience in manufacturing or mechanical industries before going to work in woolen

[1] *Ibid.* p. 955.

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and worsted mills.[1] About 16.6 per cent had been engaged in the industry less than one year; 53.9 per cent less than five years; 26.3 per cent ten years or over.[2] We are told that on the whole the mills are at a disadvantage on account of the large proportion of new and inefficient workers.

Many employees of woolen and worsted mills are continually shifting from one mill to another, and large numbers are frequently entering and leaving the industry. Of all those investigated, 27.7 per cent had been employed less than one year in the particular mills from which they were reported, and well over half of these were new to the industry.[3] Italians and natives of eastern and southeastern Europe showed, on the whole, the shortest period of service. The board found that, during the year 1910, mills employing an average of 13,233 persons actually gave employment to 28,421 persons, so great was the number of those who were discharged or who quit of their own accord.[4]

Facts of this nature, together with data as to actual wages paid, which follow in the report, are important and significant, although they furnish no aid whatever in determining rates of duty. Much of the information given is contained in other government publications, notably in those of the Bureau of Labor and of the Immigration Commission, but its inclusion in the report is perfectly legitimate. It is possible that there has been some duplication in field work and in tabulation of returns; but it is doubtful to what extent the Tariff Board could have utilized data collected by other governmental agencies, because of the specific manner of presentation adopted.

The results of the investigation of efficiency of labor and machinery, which follow the general information as to labor and wages outlined above, occupy two hundred pages, of which all but about forty pages are taken up by tables showing the efficiency of weavers on different kinds of fabrics. The efficiency of the weave room is considered a good index of the efficiency of the mill as a whole; it is expressed as a percentage and rep-

[1] Report. p. 958.
[2] *Ibid.* p. 962.
[3] *Ibid.* p. 971.
[4] *Ibid* p. 984.

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resents the proportion of total working time that the loom is actually in operation. A loom has to be stopped from time to time, to allow the weaver to tie a broken thread or to change bobbins or for other reasons; and although a certain amount of stoppage is unavoidable, the ratio of actual running time to total time is an index of the efficiency of the operative.

The standard or ideal efficiency for worsted weaving is considered to be 80 per cent, and for woolen weaving, 70 per cent.[1] Of twenty-two worsted mills investigated, four had an efficiency of over 80 per cent (the highest having 87.66 per cent); seven had between 70 and 80 per cent; nine had between 60 and 70 per cent; two had under 60 per cent (the lowest having 52.28 per cent). Variations of from 40 per cent to 90 per cent efficiency on individual looms occurred in single mills. Data procured for exactly similar looms on the same fabrics, and information gleaned from mill owners in special correspondence on this point, indicate clearly that these differences in efficiency are due in the main to the varying abilities of the weavers rather than to defects in the machinery.

This part of the report gives mill owners and efficiency engineers much illuminating information; but the lack of corresponding figures concerning the efficiency of operatives in foreign mills detracts greatly from its value for the immediate purpose of the report, for only by comparison are these data important from a tariff-making point of view. The tables reveal alarming inefficiencies in many mills, but it is unsafe to conclude that our factories are at a disadvantage in this respect. On the question whether the inefficiency is due in any way to the protective tariff, the board expresses no opinion. If the industry were monopolized, there might be reason to draw this conclusion despite the absence of comparative data, but since it is well known that there is active competition in wool manufactures (the American Woolen Company controlling only about one-eighth of the output), it may be argued that this counterbalances any influence the tariff has in putting a premium on inefficiency. It may be concluded that, although

[1] *Ibid.* p. 1051.

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the investigation of efficiency is valuable as far as it goes, yet it is of no service in the determination of duties, and throws no light on the relationship between the tariff and technical development.

VI

Taken all in all, the report shows symptons of hasty preparation and of a not too careful analysis of the facts gathered. It was prepared under pressure, with instructions that it be ready by a specified date; at the last minute, however, the time allotted had to be slightly extended. With the exception of the "Glossary," practically every section of the report is lacking in some essential; wool costs are not even approximately determined; manufacturing costs are not sufficiently analyzed; the inquiry into the cost of ready-made clothing is not supplemented by an adequate investigation of the cost to the consumer; and the data on labor and efficiency lose much of their possible value by reason of the lack of comparative figures from other countries. Because of these omissions the report furnishes only the roughest kind of bases for estimating, or for guessing at, appropriate duties. The words of President Taft in his message to Congress of December 20, 1911, that the report "is a monument to the thoroughness, industry, impartiality and accuracy of the men engaged in its making," are hardly borne out by careful scrutiny. Nevertheless the report, in spite of its shortcomings, is extremely valuable. It shows clearly enough that the cost of production is much greater in the United States than it is abroad. It shows also that the present duties are higher than necessary. Accordingly, although we are forced to the conclusion that some parts of the work might have been much more efficiently and satisfactorily performed especially if more time had been allowed for the investigation, the report as it stands amply justifies the existence of an independent and permanent tariff commission, and marks a distinct advance in our handling of this vast and complicated problem.

L. D. H. WELD.

UNIVERSITY OF MINNESOTA.

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RECENT TAX REFORMS ABROAD. III

IN the preceding articles of this series,[1] the recent changes in the fiscal policy of Great Britain and of Germany were discussed, and the Australasian development was considered, so far as the general and progressive taxes on land value were concerned. It now remains to examine the other phases of the Australasian situation and to draw the conclusions applicable to our American conditions.

VI. *The exemption of improvements in Australasia*

In Australasia, during the last two decades, the principle of land-value taxation, first applied in the states, has been extended not only to federal but to local revenues. It is true indeed, that the form which the local movement has taken has been slightly different from that of the state and federal movements. The local taxes or rates, as they are called, were originally levied largely on the same principle as in the mother country; that is, they were imposed on the rental value or the so-called annual value of real estate. The practical consequence was the same: when the property was not rented, it was assumed to possess no rental value, and it therefore paid no taxes. Under this system, vacant land might be held out of the market for speculative purposes for an indefinite time. To prevent this practice, a movement set in to replace the tax on rental values by one on capital values. In some cases a further step was taken: improvements were exempted, in whole or in part, so that the tax fell, to an increasing extent, upon bare land values.

It is true that in the majority of the Australasian states this new system has not yet been introduced. Thus Victoria, South Australia, West Australia and Tasmania still levy the rates on annual value. But in the three other states, namely in New South Wales, Queensland and New Zealand, the new

[1] POLITICAL SCIENCE QUARTERLY, vol. xxvii, pp. 454-469, 577-604.

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system has been applied. In Queensland the law dates back to 1890; in New Zealand, to 1896; and in New South Wales, to 1906; although in each case the system was actually inaugurated a few years later.

In Queensland the Valuation and Rating Act of 1890 was passed chiefly for fiscal reasons. The movement goes back to a law of 1879, known as the Divisional Boards Act.[1] While this bill was under discussion it was suggested that, as considerable areas of country were in process of purchase from the crown, under the condition that certain improvements be made, these obligatory improvements ought to be exempt for rating purposes, since otherwise the conditional purchasers might delay making them. The purpose of this suggestion was obviously to accelerate the settlement of the country. A further suggestion, that the concession for improvements ought to be extended to the towns, was stoutly opposed; and, in the case of country lands, the endeavor to exempt improvements other than houses and buildings was defeated. The law as passed provided that, in the case of ratable property in the country districts, there should be a separate valuation of land and of houses, and that there should be deducted from the total annual rental value "an amount equal to one-half that portion of such rent as shall be deemed to arise from any house or buildings that may be situated on such ratable property."

This remained the situation until 1887, when the Valuation Act provided that in the case of town and suburban lands the annual rental subject to taxation should be estimated as a sum equal to two-thirds of the rental value, including improvements. At the same time, however, a further modification was introduced in fixing the tax limit. In the case of unimproved land the minimum fixed for the rate of taxation was a little higher than in the case of improved land (eight instead of five per

[1] For the history of these earlier attempts *cf.* pp. 197 *et seq.* of the British Blue Book entitled: Taxation of Land, etc.: Papers bearing on Land Taxes and on Income Taxes, etc., in certain Foreign Countries, and on the Working of Taxation of Site Values in certain States of the United States and in British Colonies, together with Extracts relative to Land Taxation and Land Valuation from Reports of Royal Commissions and Parliamentary Committees. Cd. 4750 (London, 1909).

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cent upon the fair capital value), and where the land was "fully" improved no minimum at all was insisted upon. Furthermore it was provided that country lands should be estimated at the fair average value of unimproved land of the same quality in the same neighborhood, the annual value to be taken at a certain percentage of this capital value. Thus improvements might be taxed more lightly than lands in the towns and were completely exempted in the country districts.

In 1890 the general finances of Queensland caused grave concern; and, after the failure of an effort to levy an additional tax upon property of all descriptions, the Valuation and Rating Bill was so framed as to give the local authorities greater taxing powers. Hitherto the state government had given £2 for every £7 raised locally by the divisional boards. In the course of the discussion the proposition was made not only to change the system of local rating from rental to capital value, but also to provide for a total exemption of all improvements. Public attention, however, was at this time more strongly directed to the need of increasing local taxation than to the particular method of rating.

In the following years, the valuation of land fell off very greatly, necessitating, of course, a progressively increasing rate of taxation. Up to 1892 the decrease in the valuations may be ascribed to the law. After 1892, however, it must be in part ascribed to the commercial crisis of 1893, from which Australia did not recover until the beginning of the new century.[1] In the larger towns this situation caused no little anxiety and led to the appointment of a royal commission in 1896. While the report of the commission was, on the whole, favorable to the

[1] As an example of this change, the valuation figures for the City of Brisbane may be cited:

1890, under the old system,	£9,061,450
1891, under the new system,	8,800,351
1892, " "	7,814,185
1893, " "	6,745,553
1894, " "	6,363,308
1895, " "	5,807,541
1902, " "	5,882,055

Cf. p. 202 of the Blue Book cited in the preceding note.

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new system, it must be remembered that the comparison was between the new system of taxing the capital value of land and the old one of taxing the rental value of all real estate. The law of 1890 had still included the valuation of buildings in the case of occupied crown lots on mineral fields, owing to the difference in the marketable capital value of the land as compared with other lands. But in 1902 the Local Authorities Act extended the principle of the exemption of improvements for local rates to all lands.

The next state to adopt the land-valuation system was New Zealand. In 1896 an Optional Rating Act was passed, giving the local bodies the option of choosing between the ordinary rating system, according to annual value, and a new tax on the unimproved capital value of land. This law, which is still in force, provides that 1*s.* in the pound on the annual value shall be deemed to be equivalent to three farthings in the pound on the capital value of any ratable property; or that the annual value of any ratable property shall be deemed equal to six per cent of its capital value. The rates on the unimproved value of the land must "be so adjusted as to equal, as nearly as may be, but not to exceed in their producing-capacity, the rates made and levied on the annual or capital value, as the case may be," under the old law. The annual value is deemed to be the letting value less twenty per cent in the case of houses, buildings and other perishable property, and less ten per cent in the case of land; but in no case shall the annual value be deemed to be less than five per cent of the value of the fee simple. The capital value is deemed to be the selling value of the land including improvements. The maximum limit of the tax, so far as the general rate is concerned, is fixed at 2*s.* in the pound on the annual value or at 1½*d.* in the pound on the capital value of all ratable property, or its equivalent on the unimproved value.[1]

The law provides that the petition to change to the new system must be signed by at least fifteen per cent of the rate payers, and that it must be adopted by a majority vote. In 1899 the first locality made use of this provision. By 1906

[1] New Zealand Official Year Book for 1911 (Wellington, 1911), p. 169.

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seventy-five localities had decided to take a vote on the change and out of these seventy-five, sixty-three voted "yes" and twelve voted "no." A few years later, in 1909–10, out of one hundred and nine boroughs in New Zealand, forty-three levied the local rates on the unimproved value of land, eighteen on the capital value of real estate and forty-eight according to the old system of annual value. The figures for the different local divisions are as follows:

	TOTAL REPORTING	RATES ON RENTAL VALUE	RATES ON CAPITAL VALUE	RATES ON UNIMPROVED VALUE
Counties	346	6	286	54
Boroughs	109	48	18	43
Independent town boroughs . . .	23	2	17	4
Total	478	56	321	101

As the boroughs are the most prosperous parts of the counties, the importance of the unimproved-value system is somewhat greater than would appear from the above figures. As a matter of fact, almost one-third of all the rates were collected under the new system.[1] Of the four largest cities two, Wellington and Christ Church, have adopted the system of exemption of improvements, but the other two, Auckland and Dunedin, have rejected it. In considering the above figures, moreover, two points must be remembered: first, that as the old system was supplanted, the number of counties that chose the system of basing the rates on capital or selling value was five times as great as the number that chose the method of exemption of improvements, while of the boroughs more than two-thirds chose the latter method; and, second, that the system of rating on the unimproved value of land applies only to the so-called general rate, and not to the special rates levied for gas, electric light, sewage, hospitals and poor relief.

[1] For full details for each locality see *ibid.* pp. 178–192.

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In New South Wales the system was inaugurated almost a decade later than in New Zealand. In 1905 the so-called Shires Act was passed, which, as supplemented by the Local Government Extension Act of the following year, provides that the general local rates shall be levied on the unimproved value of the land at a rate of not less than 1*d.* nor more than 2*d.* in the pound. A council of the municipality which has levied a rate of not less than 1*d.* on the unimproved value is permitted to impose such additional rate as may be required, on either the improved or the unimproved value. The total amount, however, to be derived from these general rates, taken together, is required not to exceed the amount yielded by a rate of 2*d.* in the pound (0.83 per cent) on the unimproved value or 1*s.* 6*d.* in the pound (7.5 per cent) on the assessed annual value of all rateable land.[1] It is also provided that as soon as any locality puts this new system into force the operation of the state tax on land values is to be suspended.[2] Here, again, it is to be noted that the so-called special rates and local and loan rates may be imposed on either the improved or the unimproved value. Most of the municipalities have, however, chosen to levy these extra rates on unimproved value. An important exception consists of the rates levied by certain water-supply and sewerage boards, which are still levied according to the old system. In 1912, sixty-four out of seventy-three municipal and shire councils raised £399,197 on land values of £31,344,898, the average rate for all local taxes being 1.27 per cent of the value of the land.[3] It will be seen at once that the rate of taxation, as compared with American rates, is extremely low.

Finally it may be added that in South Australia the Land Values Assessment Act has for some time permitted the localities to substitute for the existing local rates, which may be levied either on gross annual rentals or on capital values, a new

[1] Official Year Book of the Commonwealth of Australia, 1901–10 (Melbourne, 1911), p. 985.

[2] *Cf.* the preceding article of this series, *loc. cit.*, pp. 601–603.

[3] The figures were printed in detail in the Sydney *Standard*, and reprinted in the Melbourne *Progress*, March, 1912.

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system of taxes on the unimproved value of land. No locality, however, has yet availed itself of this permission.

Such has been the development of the law. What are the practical results? It is usually claimed by the advocates of the system that the exemption of improvements will do away with speculation, stimulate the building trade, lower house rentals and abolish congestion of population in the cities. What light does the Australasian experience throw upon these claims?

In considering these matters, we are dependent for information largely upon the reports of the local authorities. In a few cases we have some information as to the local effect of the state taxes on land values; but these taxes, it will be remembered, are so insignificant as to be almost devoid of importance in the towns. Thus in South Australia, where after 1895 considerable areas of suburban land in the towns were built upon, we are assured, in an official report of 1906, that "much of the improvement would have occurred irrespective of taxation."[1] Furthermore, we are informed that "on the rental of house property and vacant sites, the effect is not appreciable." Finally we are told that, while there was a falling-off in speculation, this was due entirely to the collapse of the land boom in the eighties, for "this phase of speculation is in no wise affected by taxation."[2] Similar testimony comes from New South Wales. The acting statistician of that state tells us that the effect of the state tax on land values has been inappreciable. Suburban building has indeed considerably advanced, but "much of the extension is due to the facilities for settling in the suburbs afforded by the excellent tramway system."[3] Rentals in the suburbs have indeed fallen; but "the reduction is due but slightly to the operation of the land tax, the chief cause being the opening up of newer and more select localities through the extension of the metropolitan tramway and railway system." He adds: "As regards the suburbs beyond the influence of the

[1] "Papers relating to the Working of Taxation of the Unimproved Value of Land in New Zealand, New South Wales and South Australia," in the British Blue Book on Taxation of Land (cited *supra*, p. 72). *Cf.* especially p. 115.

[2] *Ibid.* p. 116. [3] *Ibid.* p. 132.

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tramway system, experience shows that in general there has not been any material alteration in rents for ordinary tenements." The entire situation is summed up in these words: "On the whole it may be said that the land tax has had no very appreciable effect on any of the conditions referred to"—that is, on the building trade, rentals, vacant sites or land speculation. In these conclusions the first commissioner of taxation concurs, stating that, "taking the operation of the land tax as a whole, it is not considered that it has had any pronounced effects on the land generally," so far as the towns are concerned.[1]

The effect of the state tax on land value, accordingly, was unimportant. As to the effect of the exemption of improvements in local taxation, the existing information is limited to New Zealand and Queensland. In New Zealand, the commissioner of taxes sent a circular of inquiry to all the local authorities; fifty-two replies were received, of which a digest has been printed. While not a little testimony unfavorable to the new system was elicited, most of the localities declare it satisfactory. During the period of its operation there was a general increase of prosperity throughout the state. In some of the replies, however, doubt is expressed whether this prosperity was in any way due to the method of taxation. The great majority of the replies are to the effect that no especial results can be discerned. So the Eketahuna council writes: "Unable to say what effect is, as success of the dairying industry overshadows the effect of taxation." The Hokitika council writes that many new buildings "have recently been erected, but this is attributed to prosperity rather than change in rating." The Hawera council tells us that the "building trade, rent, land speculation *etc.* have not been affected to any appreciable extent." The Pahiatua council writes that the briskness in the building trade "is considered due to natural causes" and to the general prosperity of the community.

Again, while some localities think that rentals have been reduced, others state the contrary. Thus, Grey Lynn tells us that the system "does not affect building trade, and has not

[1] "Papers relating to the Working of Taxation" *etc.*, *loc. cit.*, p. 133.

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tended to reduce rents." The Kairanga council says: "Building trade not stimulated, rents little affected." From Karori borough we hear: "Do not think building trade or rents affected." From Maraetai we learn: "No perceptible change in building or otherwise." The North East Valley borough states: "Does not materially reduce rents." Finally, Woolston borough informs us that, while the building trade is improving, "rentals are not lower." Some localities call attention to unfavorable results of the system. Thus, the Stratford borough council holds that the "system acts unfairly and tends to the crowding of houses on small sections"; and from Winton borough we hear that the system "throws tax much heavier on unimproved sections and appears to benefit those who crowd good buildings on small areas.[1]

The testimony from New Zealand thus appears to be inconclusive: something at least can be said on both sides of the question. When we come to Queensland we find a very able report from Mr. Corrie, a leading architect who has served for many years as a valuer in Brisbane. While he is favorable on the whole to the exemption of improvements, he tells us that the objection that the system must lead to the over-utilization of the land "has not so far been tested in the state."[2] Moreover, he is decidedly of the opinion that, while the system has hitherto worked fairly well, there are distinct limits to its usefulness and even to its use. He writes:

[1] *Ibid.* pp. 138–140. The statements and inferences cited above are corroborated by an independent investigation subsequently made by J. E. Le Rossignol of Denver and W. D. Stewart of Dunedin, the results of which are presented in an article entitled "Rating on Unimproved Values in New Zealand," published in Addresses and Proceedings of the First Conference of the National Tax Association (New York, 1908), pp. 273 *et seq.* After pointing out that, in cities like Wellington, overcrowding has been increased rather than diminished, and that taxes on rural property in general have been relatively increased as compared with taxes on town property, the authors tell us that "the facts do not warrant optimistic conclusions. . . . The benefits of rating on unimproved value are not so obvious as to command unanimous approval. . . . The opposition to the system appears to be growing stronger as the people are coming to recognize its relation to the propaganda for single tax. . . . Up to the present time the economic effects of rating on unimproved value have been insignificant." *Cf.* especially p. 284.

[2] "Papers relating to the Working of Taxation" *etc.*, *loc. cit.*, p. 211.

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Although raising considerable local revenue on unimproved land value has so far met with little objection, it by no means follows that very profound study has been accorded to the subject by those most interested. As further duties come under local government jurisdiction, the present system cannot escape from very critical examination, for manifestly there is a limit to the burden which will be accepted upon any single class of property.[1]

He tells us that since the local taxes on land values are at present not excessive and are expended upon services from which the land derives a reasonable benefit, there is not much likelihood of discontent soon arising from the system in Queensland; but he points out that, as soon as the land tax increases to the point of diminishing the capital value of the land, discontent will be sure to arise. What has saved the system thus far has been the lowness of the rate, coupled with the rise of land values, due to the general prosperity of the colony. "As taxes increase, however, and especially as fresh duties have to be undertaken, all the issues will be less simple, and other forms of property—as, for instance, in the fight over the Brisbane hotels question—will be looked to for contribution as well as land." His conclusion is that the future has in store the "due recognition of two important factors in municipal finance (not satisfactorily accounted for under a land tax) *viz.* 'ability to pay' and the now equally recognized principle that 'persons as well as things' should contribute."

From this evidence three inferences can be drawn. In the first place, so far as the testimony is favorable to the exemption of improvements, it must be remembered that the new system is compared with the old method of taxing rents. What pleases the public, so far as it is pleased, is not so much the exemption of improvements as the change from taxation of rental value to taxation of capital value. This is apparent from the testimony. Thus, for instance, the Wellington city council favors the new method chiefly because it "paralyzes the old system, under which rental values on lands could, by simple manipulation, reduce local taxation to a farce."[2] From this

[1] "Papers relating to the Working of Taxation" *etc., loc. cit.*, p. 212.

[2] *Ibid.* p. 140.

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point of view it is a most significant although hitherto unnoted fact, that in South Australia, where the exemption of improvements is legally permissible and where no locality has yet availed itself of the permission, the old system of local rates allows an assessment on capital values. That is to say: where local rates are levied only on rental values, there arise all the difficulties which have induced England and Germany to impose new land taxes and which have led in Australasia to the exemption of improvements; but where the tax is levied on capital instead of rental values, as is the case in the United States and as is true in large measure in South Australia, the tendency to any change is far less apparent. So far, therefore, as the results of the Australasian experiments are deemed favorable, they may be declared to be due primarily to the adoption of the system of taxing capital instead of rental values.

In the second place, even thus interpreted, the reports from Australasia are inconclusive. In some cases we hear of good, in other cases of bad results. Nowhere has a careful study been made of the consequences of the exemption of improvements as compared with a tax on the capital value of all real estate.

Finally, as the experience of Queensland clearly shows, the whole system is of slight importance, partly because the rates have been low, and partly because the adoption of the new method of assessment has come at about the same time as the recovery from the long depression of the early nineties.

When to all these considerations we add the fact that in most cases only a portion of the local rates are levied on land values, we are forced to the conclusion that a much longer experience will be required before it can be asserted with any reasonable degree of confidence that the system of exempting improvements from taxation has had results at all comparable to those that are often ascribed to it by hasty writers.

VII. *The Australian income tax and the relation of state to federal finance*

The third phase of tax reform in Australasia is the development of the income tax. Here again we have to deal not with the sudden introduction of any new principle, but with the

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elaboration of a system initiated some time ago. The last few years have everywhere shown a growing realization of the importance of income taxation, and in several states the year 1910 marked a significant change.

Australasia was among the earliest democracies to introduce progressive inheritance taxes. These have remained substantially unchanged for several decades. Income taxes came considerably later. With the exception of South Australia, where such a tax was introduced in 1884, there were no income taxes on the Australian continent until shortly before the end of the nineteenth century. In New Zealand, in 1891, an attempt was made to reach incomes in the same act which imposed the land tax. The tax imposed on incomes was only slightly progressive: 6*d.* in the pound on the first taxable £1000 and 1*d.* more on each additional £1000. It was not until 1895 that Victoria and New South Wales introduced the income tax, and not until 1902 that Queensland and Tasmania followed suit.[1]

In the year 1907 there began a new phase of income taxation: such taxes were introduced where they had not yet existed, and almost everywhere the old taxes were increased, both in amount and in the steepness of the scale of progression.[2]

[1] In Seligman, Progressive Taxation in Theory and Practice (2nd ed., 1908), pp. 97 *et seq.*, will be found a detailed account of all the taxes in force in Australasia up to 1906, with the one exception of New South Wales, where the income tax was not levied according to the progressive principle. In New South Wales the law of 1895 imposed a tax of 6*d.* in the pound on all incomes of £200 and over, if not derived from land.

[2] A statement of the income taxes in force in 1911 is herewith appended. Full details will be found in the Official Year Books of the Commonwealth of Australia, 1911, pp. 843, 849, and of New Zealand, 1911, pp. 766, 775.

Victoria. The law of 1895 established a progressive scale, which was changed in 1903 and 1904. In the case of incomes from personal exertion, the rates are now (1912) as follows:

INCOMES	RATES (PER £)	INCOMES	RATES (PER £)
£100—£500	3*d.*	£1000—£1500 . . .	5*d.*
£500—£1000 . . .	4*d.*	Over £1500	6*d.*

If the income is derived from property, the rates are doubled. In 1906 incomes

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Thus in 1907 the income-tax system was extended to Western

under £200 were exempted, and an abatement of £150 was allowed on incomes from £200 to £500. In 1908 a distinction was made between individual and corporate incomes, the former being reduced by twenty per cent; but in 1910 this provision was repealed. Land used as a residence by the owner is deemed to yield an income of four per cent on its capital value. A tax of 7*d.* in the pound is imposed on the incomes of all corporations except life insurance companies, which pay at the rate of 8*d.* in the pound. Foreign shipowners pay 5*d.* in the pound.

New South Wales. The act of 1895 was amended in 1907. The rate is still 6*d.* in the pound; but in the case of incomes derived from personal exertion the exemption has been increased to £1000.

Queensland. The act of 1902 was amended in 1906 and 1907 as follows:

INCOMES FROM PERSONAL EXERTION	RATES (PER £)
£200— 500	6*d.*
500—1000	6*d.* up to £500, 7*d.* above
1000—1500	7*d.* up to £1000, 8*d.* above
Over 1500	8*d.*

£200 is deducted in every case. On income derived from property the rate is 9*d.* in the pound; and in the case of absentees and corporations, the rate is 1*s.* in the pound.

South Australia. The act of 1884 has been frequently amended. The rate in the case of incomes from personal exertion is at present 4 1-2*d.* in the pound for all incomes from £150 to £800 and 7*d.* in the pound above £800. In the case of income from property the rates are 9*d.* and 1*s.* 1 1-2*d.* respectively. In the case of incomes up to £400, £200 are exempt.

Western Australia. The law of 1907 fixed a rate of 4*d.* in the pound on all incomes over £200, and fifty per cent additional in the case of absentees. Corporations, however, by a law of 1899, amended in 1906, are subject to a tax of 1*s.* in the pound on dividends.

Tasmania. The act of 1902 was repealed in 1910, when the following rates were imposed in the case of incomes from personal exertion:

INCOMES	RATES (PER £)	INCOMES	RATES (PER £)
£125	4*d.*	£900—1000	Same on first £600
125—150	4 1–4*d.*		8*d.* on next £200
150—250	4 3–4*d.*		10*d.* on remainder
250—350	5 1–2*d.*		
350—400	5 3–4*d.*		
400—700	6*d.* on first £400	Above £1000	Same on first £800
	7*d.* on remainder		10*d.* on next £200
700—900	6*d.* on first £400		1*s.* on next £500
	7*d.* on next £200		1*s.* 2*d.* on next £500
	8*d.* on remainder		1*s.* 4*d.* on remainder

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Australia, and the earlier laws of Queensland and New South Wales were amended; and in 1910 the rates in Victoria, Tasmania and New Zealand were increased, in some cases, to a substantial extent. From the point of view of revenue, income taxes now play a considerably greater rôle than land taxes everywhere in Australia except in Tasmania. In New South Wales and Victoria the income tax is exceeded only by the inheritance tax, which yields about twice as much. In Queensland and South Australia the income tax is the most important of all; but in Western Australia the dividend tax is more productive. (See table on page 85.)

In New Zealand, on the other hand, where the land tax, as we have seen, has played so prominent a rôle, more revenue is still derived from this tax than from the income tax; but with every year the disproportion between the two is diminishing. In 1898–99, for instance, the yield of the income tax was £115,480 as against £298,052 from the land tax; whereas in 1910–11 the income tax yielded £407,235 as against £628,723

In the case of incomes from property, the rate is 1*s.* in the pound, provided that the income is over £100. Incomes under £80 in the case of unmarried persons or under £100 in the case of married persons are exempted. The following abatements are permitted:

INCOMES	DEDUCTIONS	INCOMES	DEDUCTIONS
£ 80—110	£70	£150—250	£40
110—125	60	250—350	30
125—150	30	350—400	20

Every taxpayer, the taxable amount of whose income is less than £150, can claim a rebate of 2*s.* 6*d.* for every child under sixteen years.

In addition to the income tax, the law of 1904, amended in 1906, imposed a so-called ability tax, the amount of which is determined according to the annual value of the property occupied or the amount paid for board and lodging. In the case of property, the rate varies from 1*d.* to 6*d.* in the pound on the annual value. In the case of board and lodging the rate varies from 3 1-2*d.* to 6*d.* in the pound on the amount payable annually for board and lodging.

New Zealand. The law of 1891 was amended in 1910 as follows: Incomes not above £300 are exempt, and a deduction of £300 is allowed on all larger incomes. Up to £700 the rate is 6*d.* in the pound, rising gradually until, in the case of incomes exceeding £2300, the rate is 1*s.* 2*d.* in the pound. In the case of corporations there are no deductions, and the rate varies from 1*s.* to 1*s.* 2*d.* in the pound.

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REVENUE FROM TAXATION IN AUSTRALIA, 1909–1910

From the Official Year Book of Australia, 1911, p. 828

TAXES	NEW SOUTH WALES	VICTORIA	QUEENSLAND	SOUTH AUSTRALIA	WESTERN AUSTRALIA	TASMANIA	ALL STATES
Probate and succession duties.	£650,202	£358,173	£61,193	£84,651	£57,416	£44,267	£1,255,902
Other stamp duties	222,720	250,358	145,556	97,877	62,714	54,741	833,966
Land taxes	9,066	114,357	. . .	94,126	34,344	79,021	330,914
Income taxes	219,977	338,585	304,693	180,923	43,865	68,330	1,156,373
Dividend taxes	. . .	. . .	. . .	. . .	88,315	. . .	88,315
Ability taxes	. . .	. . .	. . .	. . .	. . .	41,928	41,928
Licenses	121,556	20,927	60,753	23,426	42,589	13,442	282,693
Other taxes	. . .	5,953	12,802	. . .	7,153	1,661	27,569
Total	£1,223,521	£1,088,353	£584,997	£481,003	£336,396	£303,390	£4,057,660

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from the land tax. It is therefore apparent that, notwithstanding the development of the land tax, the scope of the income tax is continually extending.

In Australasia as a whole, if we take the income and the inheritance taxes together, we find that their yield forms an overwhelming proportion of the revenue from direct taxation. Entirely apart from any consideration of the indirect taxes which are still so important, Australasia may be said to be moving, on the whole, away from rather than in the direction of the principle of the single tax.

One feature in the development of the taxation of incomes by the states deserves a word of mention. Originally much difficulty was experienced in making the salaries of federal officials subject to such taxation. In 1907, however, the federal Parliament enacted the Commonwealth Salaries Act, which declared that salaries and allowances paid by the Commonwealth are liable to taxation by the states, payable in the state where the officer resides and the salary is earned, or, in the case of a member of Parliament, in the state in which he was elected. The only exemption is the salary of the governor-general.

The fourth and final point in our consideration of tax reform in Australasia is the relation of state and federal finance. When the Commonwealth was created in 1900, its constitution vested in the federal government exclusive power to levy customs and excise duties and in the federal and state governments concurrent powers of direct taxation; but, as the revenues of the several states had previously been derived, to a large extent, from customs and excises, and as it was practically certain that the commonwealth expenditures would, for some years at least, not equal the revenue derived from these sources, it was decided to allot to the states a certain proportion of this revenue. In default of such allotments, the states would have found it necessary to raise the rates of their taxes on inheritances, incomes and land to inordinate heights. It was accordingly enacted, by the so-called "Braddon" section of the act by which the federal constitution was established, that during the

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first ten years of the existence of the newly created union, and thereafter until otherwise provided, there should be returned to the states three-fourths of the net revenue from customs and excises. Thus was adopted the system of the collection of taxes by the central government, with the distribution of a part of the proceeds among the state authorities.

The Braddon clause was, however, not the only section affecting the relations of federal and state government. Many functions of government, which under the American system are reserved to the states, were transferred from the states to the Commonwealth. It was fully recognized that the discharge of these functions would necessitate large federal expenditures; but it was not believed that the transfer of expenditure from the states to the Commonwealth would be, at first at least, at all commensurate with the transfer of revenue. Accordingly there was inserted in the constitution a provision for the repayment to the states of any surplus federal revenue. The principles which should govern the allocation of revenues according to this clause, as well as under the Braddon clause, were set forth in a special section of the constitution, which was to remain in force for five years and thereafter until changed by Parliament. This embodied what became known as "the bookkeeping system." Under this scheme each state was to be credited with the federal revenue collected in respect of that state, and to be debited with the expenditure incurred on its behalf in connection with the transferred departments, as well as with its share, on a *per capita* basis, of the new expenditure of the Commonwealth. It was also provided that the duties chargeable on goods imported into one state and consumed in another should be credited to the consuming state, on the theory that the duty ultimately falls upon the consumer. The balance in favor of any state was payable monthly by the commonwealth.

Finally, another special clause (section 96) of the constitution provided that the Commonwealth Parliament might grant financial assistance to any state on such terms and conditions as the Parliament should think fit. This section was introduced with the object of rendering the constitution more elastic in the matter of assistance to the states than it would have been if the

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Braddon clause and the bookkeeping system had been rigidly adhered to. No claim for such special assistance has, however, yet been made.

So far as the Braddon clause is concerned, it may be said that for some time it worked fairly well; although with every year the situation became more embarrassing in the separate states, for the reason that, in making up their budgets, it was practically impossible to forecast, for the immediate future, what would be the share of each state in any particular federal tax. Moreover, the one-fourth revenue assigned to the federal government gradually proved to be inadequate for its expenses. At first, the Commonwealth returned to each state not only the three-fourths due it, but a substantial balance in addition. By 1908, however, not only had the growing expenses of the Commonwealth swallowed up the whole of the one-fourth, so that there was no balance to be returned to the states, but the one-fourth itself was now inadequate.[1]

This contingency was foreseen several years before it arose, and attempts were made to find some satisfactory way out of the difficulty. Repeated conferences were held by the premiers of the several states, but it was not until 1909 that an agreement was reached. Meanwhile the matter had become particularly urgent, because of the decision that the federal govern-

[1] This is apparent from the following figures:

YEAR	NET REVENUE: CUSTOMS AND EXCISES	ONE-FOURTH ASSIGNED TO COMMONWEALTH	AMOUNT NEEDED FOR COMMONWEALTH	BALANCE RETURNED TO STATES
	£	£	£	£
1901–02	8,633,996	2,158,499	1,269,757	888,742
1902–03	9,413,442	2,353,110	1,207,876	1,145,234
1903–04	8,844,195	2,211,049	1,465,716	745,333
1904–05	8,543,310	2,135,827	1,400,541	735,286
1905–06	8,739,298	2,184,825	1,354,915	829,910
1906–07	9,386,097	2,346,524	1,540,523	806,001
1907–08	11,368,220	2,842,055	2,511,315	330,740
1908–09	10,573,860	2,643,465	2,643,465	*nil*
1909–10	11,323,207	2,830,801	2,830,801	*nil*
	86,824,625	21,706,155	16,224,909	5,481,246

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ment should assume all the state debts. The agreement between the ministers of the Commonwealth and of the states was to the effect that the Commonwealth should retain all the customs and excise revenues, and that it should pay over to the states a definite sum every month computed at the rate of £1 5*s*. per annum per head of population.[1] In view, however, of the heavy obligations incurred by the Commonwealth in the payment of old-age pensions, provision was made for withholding the actual shortage in the revenue from the sums returnable to the states during that year, with an adjustment between the pension states and the non-pension states. Finally, because of the large *per capita* contribution of Western Australia to the customs revenue, provision was made for an additional special annual payment to that state; this was to be £250,000 the first year and was to diminish by £10,000 annually thereafter. One-half of this allotment to Western Australia was to be deducted from the shares of the other states.

The act embodying this agreement was passed by the federal Parliament in December, 1909, to take effect as an amendment to the constitution; but the amendment was rejected by the electors at a referendum in April, 1910. It therefore devolved on the federal Parliament to settle the question by law; and a few months later the Surplus Revenue Act was passed, which embodied practically the same provisions, and which is now in force.[2] By the terms of this act the Commonwealth undertook, during the period of ten years commencing July 1, 1910, and thereafter until Parliament should otherwise provide, to pay to each state, or to apply to the payment of interest on the state debts assumed by the Commonwealth, an annual sum of 25*s*. *per capita*. The state of Western Australia was to receive an additional sum, amounting in the first year to £250,000 and diminishing in each succeeding year by £10,000, and one-half of these payments was to be deducted proportionately from the amount payable to all the states. Any surplus revenue in the

[1] The full text of this agreement will be found in the Official Year Book of New South Wales, 1909–1910 (Sidney, 1911), pp. 358, 359.

[2] The Act is printed in full in the Official Year Book of the Commonwealth of Australia, 1901–10 (Melbourne, 1911), p. 800.

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federal treasury at the end of any financial year was to be turned over to the several states; and for the year 1911 the Commonwealth was authorized to deduct from the amount payable to the states the estimated deficit in the federal budget, figured at £450,000. In the same federal election in which the fiscal amendment to the constitution was rejected, the provision to have the Commonwealth assume all debts incurred by the states was adopted.

VIII. *Conclusions*

The foregoing survey of tax reforms in England, Germany and Australasia appears to justify certain general conclusions.

First and foremost, attention is to be directed to the great development of the income and inheritance taxes, with the adoption of the modern principles of progression and of differentiation of taxation. In these respects, as we have seen, England has taken the lead, although Germany follows closely in the development of the income tax, and Australia in that of the inheritance tax. In Germany the effort to round out the system of direct taxes by the inheritance tax has thus far been only partially successful; while in Australasia, where the inheritance taxes were the first to be adopted, the income tax is for the most part levied on a scale somewhat similar to the English. The growth of the taxation of incomes and inheritances is the most significant aspect of the general endeavor to realize the principle of ability in taxation.

Second in importance is the development of the land taxes, and more especially of the taxes on land values. Here, as we have seen, Australasia was really the first in the field, with Germany next and England following closely. But in Australasia the movement has been primarily toward the exemption of improvements from taxation, coupled with a progressive tax on land, for social rather than for fiscal reasons. In Germany, on the other hand, the significant tendency has been in the direction of the taxation of the so-called unearned increment of land, first by the towns, and now more recently by the empire. England has gone further than either of the other countries in that it combines with the increment-value duty a tax on the so-called undeveloped land.

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In none of these cases, however, should the significance of the land taxes be misapprehended. Far from constituting an attempt to apply the principle of the single tax, as is often erroneously asserted, the movement aims rather to realize more fully the principle of ability to pay, by emphasizing the production rather than the consumption side of the doctrine of faculty.[1] Not only is the fiscal value of these land taxes everywhere a minor consideration, but, as I have pointed out, the real significance of the land taxes in England and Germany and of the local land taxes in Australia is to be found in the abandonment of the old and discredited method of taxing land according to rental value and the substitution of the newer method of taxing land according to capital or selling value. The old system gave an unjust advantage to the land speculator and was largely responsible for the congestion of population in the towns. The new system is an attempt to make the land-owner bear his proper share of the public burdens.

The third point to be emphasized is the importance that is still attached to indirect taxes. In England, as we have seen, the additional revenue that has been provided by the recent tax reforms has come equally from direct and indirect taxes. In Germany far greater stress has been put upon the indirect than upon the direct taxes; and in Australasia the overwhelming mass of the total revenue, federal and state, is still derived from customs and excises.

These facts indicate not only the fallacy of the claim that there is any tendency toward a single tax on land, but also the incorrectness of the assertion that the revenue of modern states must be derived chiefly from direct taxes. A careful study of the evidence leads us to the contrary conclusion, and shows that there must be some fundamental explanation of the persistence of indirect taxes. This is not the place to attempt such an explanation—which, it may be said in passing, is not given in any of the current treatises on finance. The outlines at least of such an explanation may be found in the suggestion that direct taxes, based on the principle of faculty or ability to pay, respond to

[1] *Cf.* the first of these articles, *loc. cit.*, pp. 468, 469.

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the individual element in the problem of taxation, while indirect taxes, which cannot be explained on any such principle of individual ability, correspond to the no less important social element in the theory of taxation. Whatever may be thought of this suggestion, and whatever limits it may be necessary to posit in the elaboration of a system of indirect taxes, it is none the less true that no explanation of the existing facts of tax reform will hold if it fails to appreciate the important place that is to be assigned in the future, as well as in the present, to indirect taxes, side by side with the direct taxes.

The fourth conclusion is the increasing importance attached to the relations between central and local finance, both as between national and state, and as between state and communal finance. Our survey discloses several important tendencies. First to be noted is the provision for new and independent sources of federal revenue, as in Australia with the land tax, and in Germany with the land tax, the inheritance tax and the suggested federal tax on incomes or on "possessions." In the second place, we notice the gradual transfer of state taxes to the federal government, as regards not only the administration but also the yield. Thus in Australasia the customs and revenue taxes are assigned to the federal government; while in Germany some of the state excises as well as the state inheritance taxes are transferred to the federal government, and the land-increment taxes are at least to be controlled by the imperial authorities. In the third place, we observe that the taxes collected by the central government are distributed, in part at all events, among the states and even in some cases among the localities. Not to speak of the English system of grants in aid, we find in Australasia a distribution of surplus revenues among the states and in Germany an apportionment of the inheritance tax as between empire and states and the distribution of the new land taxes among empire, states and localities. More and more the fiscal problem is being envisaged as a totality; and the relative claims of the community, state and central governments are being considered from the point of view of an equitable distribution of the entire burden resting upon the individual or the class. This is the most recent phase of modern tax reform,

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and for this reason doubtless it has hitherto received the least study. It is, however, perhaps the most distinctive aspect of the modern movement.

Summing up all these conclusions, we see that modern tax reform, as illustrated in these three great nations, presents a combination of social and fiscal considerations; or rather, that an attempt is being made to solve the fiscal problem with due regard to the social aspects of the situation.

If it be inquired what lessons these movements contain, so far as the United States is concerned, it would probably not be far amiss to state them as follows. So far as indirect taxation is concerned, the United States has not much to learn from this recent development. Almost the entire revenue of the federal government is derived from indirect taxes, and in some of our leading commonwealths not a little revenue is drawn from similar sources. Taking public revenues as a whole in the United States, the balance between direct and indirect taxes is fairly well maintained, and there is not much need or likelihood of any great alteration in their present proportions.

Secondly, so far as the land taxes are concerned, the United States again has not much to learn from the recent development abroad. As we have seen, the system of land taxation in the United States is superior to that found anywhere else. Whether by accident or as a result of economic conditions, it is based on the capital or selling value of the land, combined with the system of special assessments for particular improvements. Neither of these systems, as we have seen, is accepted—at all events, neither is developed in anything like the same degree—in England, in Germany or in Australasia; and the movement for the imposition of land taxes in those countries is, on the whole, nothing more than an attempt to reach the position that has long been occupied by the United States. It is possible that our American system may be supplemented by a small tax on the future so-called unearned increment; and it is also possible that in certain portions of the country a partial or a complete exemption of improvements from the land tax may be found desirable. But in many other portions of the country such changes will be found to be either unnecessary or unde-

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sirable. Thus in the main we may regard with equanimity the present situation of the United States, as compared with that of the rest of the world.

In the third place, so far as inheritance taxes are concerned, the United States is rapidly approaching the practice that is found abroad. In some of our more progressive American states this form of taxation has already been introduced; in others the movement is well under way, so that here also no especial lesson need be emphasized.

It is however on the two remaining points that the chief emphasis is to be laid. Income taxation in the United States is only in the very first stages of development. What has been successfully accomplished in England, in Germany and in Australasia is, for the most part, only in the stage of discussion in the United States. A study of the recent reforms of taxation in the rest of the world cannot fail to compel the conclusion that the near future has in store for the United States some form of income taxation.

Finally, and above all, we are led to the conclusion that for the next few decades in the United States the most pressing problem is to be that of the relations of federal, state and local finance. Scarcely a single problem connected with the more important direct taxes can be attacked, with any hope of successful solution, without a consideration of these important relations. That England, Germany and Australasia should all be devoting so much attention to this series of questions is a significant sign of the time; and from the discussions carried on and the conclusions arrived at in these and other foreign countries we may hope to gain some light as to the disposition to be made, in the not distant future, of the income tax, the inheritance tax and the corporation tax in the United States. The economic forces which are making the whole world akin are everywhere influencing taxation. With the increasing similarity in the conditions of economic life, it is not unreasonable to expect greater correspondence in the fiscal systems.

EDWIN R. A. SELIGMAN.

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EUROPEAN DIPLOMACY AND THE BALKAN PROBLEM

FOR a clear understanding of the recent events in the Balkan peninsula, it is necessary to go back to the Revolution of July 24, 1908. If we consider the condition of affairs in Turkey on the eve of that event, the attitude of the Balkan states to Turkey and to one another, and that of the great powers to Turkey, to the Balkan states and to one another, we shall be in a better position to trace the course of events during the past four years and to understand the situation that confronts European diplomacy to-day.

In July, 1906, the Hamidian régime of absolutism and terrorism was tottering to its fall. The rule of the palace favorites had bankrupted the country. The Turks, as well as the subject peoples in the provinces, were groaning under the exactions of the tax-farmers. No one in Turkey, however, dared protest, because of the system of espionage which extended everywhere. The army was unpaid and much of it in rags, and there were rebellions in Arabia and Albania. But it was Macedonia which was to cause Abdul Hamid's undoing—as well as that of the Young Turks four years later.

Article xxiii of the Treaty of Berlin of 1878 provided for the convocation of an international commission to draw up a scheme of reform for the European provinces left to Turkey. This commission presented to the Porte the results of its labors, August 23, 1880; but this "Law for the Vilayets of Turkey in Europe" remained a dead letter, because the Porte refused to ratify it and the powers were too jealous of one another to unite in compulsion. In the meantime the Macedonians had constantly before their eyes object lessons in the results of freedom, as seen in the dominions of their Montenegrin, Servian and Bulgarian brethren, made independent or autonomous by the same treaty which left them in subjection. But every demand made either by the Macedonians themselves or by the powers in their behalf resulted only in increased repression and exaction. Their brethren in the free states, therefore, sent revolu-

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tionary bands into Macedonia, partly for vengeance upon the Turks, partly to compel European intervention, from which each state hoped to profit territorially, as some of them had in 1878. Unfortunately, Macedonia resembles an anthropological museum with the specimens in chaotic arrangement. While every village is of one nationality, every district contains villages one of which may be Bulgarian, the next Servian, the next Greek and another Ottoman. It was the business of each of the bands to "convert" as many villages to its own nationality as possible; and the resulting animosity of Greeks, Servians and Bulgarians towards one another was even greater than their hatred of the common enemy, the Turk.

By 1903, Macedonia was in such a state of anarchy that the two powers having the greatest interests in the Balkans, Austria and Russia, with the concurrence of the other great powers, presented to the Porte a program of reform drawn up by their representatives at Mürzteg, Austria, October 9, 1903. By the terms of the Mürzteg program two civil agents, one appointed by Russia and one by Austria, were to supervise the local authorities in the application of reforms. The gendarmerie was to be reorganized under a foreign general in the Turkish service, who was to have associated with him a number of officers from the armies of the great powers. In 1905 a financial commission, consisting of representatives of France, Germany, Russia and Italy, was added to assist the civil agents of Austria and Russia and to introduce financial reforms. But practically nothing was accomplished of benefit to the Macedonians. The Turkish local officials offered a sullen but determined opposition to the introduction of the reforms; and as the civil agents had no executive power, they were helpless, beyond reporting to their respective governments the numerous massacres and outrages that took place. Abdul Hamid resorted to his old game of playing off one great power against another. Austria was bought off in 1907 by a concession to build a railroad through the sanjak of Novi Bazar, which would connect her Bosnian railroad with the Salonika-Monastir road and give her direct access to Salonika. This ended the Austro-Russian *entente*. The outrages in Macedonia, however,

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grew worse; and when, in June, 1908, Edward VII visited the Russian emperor at Reval, a new program of reform was drawn up, which was not only to provide for more effective European supervision but also to control the administration of justice. Before the Reval program could be enforced, however, the Revolution transformed the Ottoman empire into a constitutional state.

What was the attitude of the several Balkan states towards Turkey and towards one another on the eve of the Turkish Revolution?

Servia had passed through five years of turmoil, which had almost brought her to the brink of ruin. After the assassination in 1903 of King Alexander and Queen Draga, who were under Austrian influence, Servia leaned once more upon Russia. But Servia is economically at the mercy of Austria, since by means of tariffs and regulations regarding imported live stock that power may ruin Servia at any time. Moreover, the concession secured by Austria from the Porte in 1907 for a railroad through Novi Bazar caused intense indignation in Servia. It has been the aim of the Serbs of Servia, ever since the Treaty of Berlin, to annex that district in order to secure a common boundary with their brethren in Montenegro; and they saw in this railroad concession a new obstacle to the fulfilment of their hopes. The relations between Servia and Bulgaria had been much improved by the negotiation in 1906 of a commercial convention, which lessened the dependence of Servia upon Austria by facilitating the export of Servian produce through Bulgarian ports on the Black Sea.

Under the benevolent despotism of Prince Nicholas, Montenegro had been making rapid strides in orderly progress for a decade previous to the Revolution. Its constant friendship for Russia was heightened by the irritation produced by the Austrian railroad concession in 1907 and by the evidence of Austrian political intrigue in Albania.

No state in the Balkan peninsula had made such remarkable progress in every direction as Bulgaria. Unlike Servia and Greece, she was almost independent of foreign powers financially. Her statesmen had consolidated her resources, and the

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great improvements introduced in the army, in the building of roads and in education had been carried through, for the most part, without resort to foreign loans.[1] Her statesmen pursued a foreign policy more independent than that of the other Balkan states, so that, although her relations with Russia were cordial, she was not unfriendly to Austria. The Porte indeed looked upon Bulgaria as the head and front of its troubles in Macedonia, and had the Revolution not occurred, in all probability war would have broken out in 1908; and the relations between Greece and Bulgaria were disturbed by the operations of their respective bands in Macedonia. With the other Balkan states, however, Bulgaria kept on friendly terms.

Greece, like Servia, had passed through a period of political disturbance which had reduced her almost to ruin. It was apparently impossible to overcome the factionalism that dominated the country, and ministries succeeded each other in rapid succession without in any way improving the condition of things. Greek finances were embarrassed; and Greek foreign relations were in a most unsatisfactory condition. Because of the attempts of the Panhellenists to "convert" the Rumanian Vlachs in her northern districts, anti-Greek demonstrations had been so pronounced in Rumania in 1905 that diplomatic intercourse was broken off. It was with difficulty that a semblance of friendly intercourse was maintained with Bulgaria, which was angered at the open manner in which the Turks favored the Greeks as against the Bulgarians in Macedonia. Moreover, the government was under constant pressure from the powers to maintain the *status quo* in Crete.

The attitude of the great powers towards Turkey up to the Revolution of 1908 was characterized by the timidity and duplicity which one might expect to find among the heirs of a sick

[1] The following statistical information regarding the Balkan States may be helpful. The population of Greece is that of 1907; the other data are for the year 1911.

	POPULATION	DEBT (£)	REVENUE (£)
Bulgaria	4,329,108	24,407,976	7,137,800
Greece	2,631,952	27,343,240	5,693,161
Montenegro	250,000	250,000	1,666
Servia	2,911,700	26,937,320	4,805,000
Turkey	35,414,300	118,056,600	25,751,700

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but wicked relative. All are irritated by his bad deeds; but each is afraid to act for fear of losing his favor, and they are too suspicious of the intentions of one another to act collectively.

Russia, the ancient enemy of the Porte and the big brother of the southern Slavs, was not feared at Constantinople. Reduced to military impotence by the war with Japan, bankrupt and rent by revolution, it was well known that the most strenuous efforts of her statesmen would be needed for some years to secure domestic peace and prosperity. Not only was she not feared by her great neighbors, but her prestige was at its lowest in the Balkans, because of her necessarily nerveless policy there, in contrast to Austro-German determination to dominate the peninsula.

Great Britain, Turkey's sometime ally, was practically without influence at Constantinople; in fact she was there the most disliked of all the powers. She had tried, after the Armenian massacre of 1896, to unite the powers to compel Turkey to introduce reforms; she was constantly reminding the Porte of its unfulfilled pledges concerning Macedonia; she was the moving spirit among the powers in prohibiting the Porte's carrying out its will in Crete; and at that moment (June, 1908) her king was discussing with the tsar at Reval an increase of interference in Macedonia. Yet hers was after all a policy of pin pricks. Her millions of Moslem subjects in India and Egypt and her vast commercial interests made her fear to act single-handed.

France, too, was powerless. She was in the throes of her Moroccan difficulty, which bade fair to bring her to blows with Germany, and she could not afford to offend her Mohammedan subjects in northern Africa by rigorous action against the caliph of the Moslem world. Moreover France has millions invested in the Balkan peninsula, and her foreign policy is, to a great extent, dominated by her desire to protect the savings of her peasants invested abroad. She wants peace at almost any price; and, while desirous of seeing conditions improved in Macedonia, she was unwilling to participate in violent measures which might disturb the *status quo* in the Balkans and bring on a European war.

Italy was in an anomalous position. Her sympathies were

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with the Triple Entente, Great Britain, France and Russia, in their desire to compel reforms in Macedonia. Her king had married the daughter of the prince of Montenegro. At this time, moreover, Italy was engaged in an educational propaganda in Albania, by means of which she hoped to strengthen her influence there. It is a cardinal principle of her foreign policy that no other great power shall be permitted to control the opposite coast of the Adriatic. Yet in these ambitions she comes in direct conflict with the aims of her ally, Austria-Hungary.

There remain the two great Teutonic powers, Germany and Austria-Hungary. With definite aims in their relations to the Ottoman empire, they have never permitted their interests there to be jeoparded by undue expression of sympathy for the subject races. Every attempt on the part of the pacifist powers to compel the Porte to improve conditions in its dominions was balked by the refusal of these military powers to unite in any representation to the Porte which would impair the sovereignty of the sultan. They did not participate in the occupation of Crete by the other great powers. In general, the Porte might confidently lean upon their support when in difficulty. The most adroit diplomatist and the man of greatest influence with the Porte among the diplomatic corps at Constantinople was its *doyen*, Marschall von Bieberstein. The visit of the German emperor to Constantinople and his action in the Moroccan affair increased German prestige immensely. William II was often referred to among the Turks as the friend of the sultan and the protector of the Moslems.

For this Austro-German friendship, however, payment was exacted. Ever since Sedan had destroyed Austria's hope of again wielding an influence in German affairs, the dual monarchy had turned its eyes to the southeast, determined to secure compensation there and especially to gain an outlet on the Ægean for its commerce. In this policy it was heartily supported by Germany. The first fruits of their coöperation were secured in the Austrian occupation of Bosnia and Herzegovina under the Treaty of Berlin. At the Congress of Berlin, moreover, Austrian influence not only secured the retention of the sanjak

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of Novi Bazar by Turkey, thereby separating the two Serb states whose territories had been made contiguous by the Treaty of San Stefano, but also established the right of joint occupation of the sanjak by Turkey and Austria-Hungary. These measures effectively prevented the growth of a great Serb empire to the south, whose existence would have destroyed for Austria-Hungary all hope of access to the Ægean. Servia's economic development was placed at the mercy of Austria-Hungary, and Austrian commercial interests became dominant in the Balkan peninsula. The securing of the railroad concession through Novi Bazar to connect the Bosnian railroad with the Turkish at Mitrovitza was the final blow to Serb hopes.

For Germany's friendship, payment has been taken in Asia Minor. By successive railway concessions Germany now has absolute control of the Anatolian Railway and the Bagdad Railway, which, when completed, will run through the Euphrates Valley and connect the Bosphorus with the Persian Gulf. The financial terms granted to the Bagdad Railway Company by the Turkish government were favorable to the concessionaires and onerous to Turkey. Not only were lands adjoining the railway granted to the company, but liberal portions of the tithes of the districts through which the railway was to pass were to be set aside to guarantee the gross receipts. The Bagdad Railway concession, granted in 1903, probably did more than any other single act of diplomacy to produce the present state of irritation between Great Britain and Germany, for it brought German influence to the shores of the Persian Gulf, which had hitherto been considered to lie wholly within the sphere of British influence. German diplomacy aimed to make German influence as dominant in Asia Minor as Austrian influence had become in European Turkey. Moreover, huge sums of money bearing high rates of interest had been lent to the Porte by the Deutsche Bank and other groups of German capitalists. As an evidence of the Porte's high regard for Germany, in June, 1908, it transferred the protection of Ottoman subjects in China from France to Germany.

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Such were the reciprocal relations of the various states, great and small, interested in Balkan affairs, when the Revolution of July 24, 1908, came as a bolt from the blue. Not a statesman in Europe had believed that the dreamers of Paris and Geneva who formed the Young Turk Party could ever realize their hope of a regenerated and constitutional Turkey. The Committee of Union and Progress acted just when it did because of its belief that an autonomous Macedonia would necessarily result from the execution of the Reval program. Moreover, Greece was threatening to annex Crete, and war between Turkey and Bulgaria seemed certain, with all the chances in favor of Bulgaria. One of the fundamental principles of the Young Turks' policy was the maintenance and the exercise of governmental authority without foreign interference. The psychological moment for action had come. Abdul Hamid was compelled to issue an iradé reviving Midhat Pasha's constitution of 1876, and the Hamidian régime of terrorism ceased to be.

The Revolution produced a complete change in the diplomatic situation at Constantinople. The rôles of Great Britain and of Germany were for the time reversed. Great Britain, after a decade of ostracism, found her influence paramount as the true exponent of constitutional government. The British minister could hardly appear on the streets because of the cheering crowds that followed him. The new government secured the services of a British admiral to reorganize the fleet, of a British financial agent from Egypt to reorganize the finances, and of a British engineer to take charge of public works. The glittering edifice of influence built up by ten years of adroit diplomacy on the part of Marschall von Bieberstein seemed to have fallen. It was necessary for all the states, great and small, to reconsider their respective attitudes towards the Porte. Who could tell what a regenerated Turkey might not be able to do? The great powers withdrew their civil and military officials from Macedonia. Bulgaria, Servia and Greece compelled their national bands in Macedonia to cease operations. It appeared as if Turkey were to be given a free hand to reorganize her affairs according to the provisions of the constitution. The subject nationalities were most hopeful. Complete

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religious freedom and the equality of all races were guaranteed. Rather, there were no longer to exist distinctions of race, because all men were to become loyal Ottomans, equal participants in the government. Christians and Mohammedans alike were to man the civil service and march side by side in the army. The law courts were to be reformed, so that the disabilities under which non-Moslems labored should be removed. Complete freedom of choice was to be given in the election of members to the Chamber of Deputies. Liberty, equality and fraternity were to be the watchwords of the new Turkey. The summer of 1908 was given up to felicitation and fraternization.

This beatific vision was of short duration. On September 19, the government gave a dinner to the representatives of the foreign powers at Constantinople. To this function M. Gueshoff, the Bulgarian agent, was not invited, on the ground that Bulgaria was a vassal state and that its agent did not rank as a diplomatist representing a foreign power. This was technically true. The Treaty of Berlin erected Bulgaria into a self-governing principality under the sovereignty of the sultan and with the proviso that it was to pay him an annual tribute. But no tribute had ever been paid, and under the old régime the representative of Bulgaria had, in later years, been treated as a diplomatic representative. To excite the national susceptibilities of the Bulgarians by the exclusion of M. Gueshoff was the first of a series of fatal errors made by the Young Turks in their foreign policy. The Bulgarian people, who took no little pride in the greater progress they had made as compared with the other Balkan peoples, would not submit to a national status inferior to that of Greece, Servia and Montenegro, even as a diplomatic fiction. On October 5 Bulgaria declared her independence, and shortly afterwards Prince Ferdinand was crowned tsar at Tirnovo, the ancient capital of the Bulgarian tsars. Nor was this all. A strike having broken out on the Rumelian section of the Oriental Railway, the Bulgarian government undertook to man it with troops. When the strike was over, the government announced that it had sequestrated the railway. When Bulgaria was formed as a principality in 1878, it assumed the control of the Turkish state railways in its territory,

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together with the rights and obligations bound up with them. But when it annexed Eastern Rumelia, in 1885, it was afraid to interfere with the railway in that province. For the following twenty-three years it was exposed to the commercial disadvantage and strategic danger of having the principal railway owned by one foreign power, Turkey, and exploited by the capitalists of two other foreign powers, Germany and Austria. From this situation it now hastened to extricate itself. Moreover, the Bulgarian government denounced the Capitulation, which had never been abrogated in Eastern Rumelia. When the powers represented that these acts contravened the Treaty of Berlin, Bulgaria answered that she was not a party to that treaty.

Bulgaria's action, however, had opened a door through which a party to that treaty was to walk. Both Bulgaria and Austria-Hungary denied that they acted in collusion: but Bulgaria's course at least facilitated the execution of the Austrian designs. On October 7, the Austro-Hungarian government announced the annexation of Bosnia and Herzegovina to the dual monarchy. Article xxv of the Treaty of Berlin of 1878 merely provided for the provisional occupation and administration of these provinces by Austria-Hungary. The sovereignty was to remain with the sultan. Moreover, the Convention of Constantinople, signed by the two powers April 21, 1879, clearly states that the occupation "in no way affects the rights of sovereignty of his Imperial Majesty the Sultan over these provinces." And although the Austrian occupation had conferred lasting material benefits upon the provinces, the people had not been won to acquiescence. They had demanded in 1878 to be united to Servia and had only submitted to the Austrian occupation in 1879 after a serious rebellion. Moreover they had not been granted political rights, even up to 1908. As a result of the Turkish Revolution they saw their fellow Slavs in the Ottoman empire endowed with political freedom and electoral rights. As loyal subjects of their "sovereign" the sultan, they prepared to send delegates to Constantinople to demand representation in the Chamber of Deputies. There was nothing for Austria-Hungary to do but

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to act, and to act quickly. Article xxv of the Treaty of Berlin also gave her the right "to maintain garrisons" in the sanjak of Novi Bazar on equal terms with the sultan. This had been considered a necessity in 1878 by Count Andrassy, in order to prevent this district, which separates Servia from Montenegro, from being seized by either of those two powers with the object of making their territories contiguous. A regenerated Turkey could now take care of this matter; and, as a concession to Turkey, the Austro-Hungarian government announced its readiness to evacuate the sanjak.

Count Aerenthal's announcement of the annexation of the provinces caused a great commotion in the chancelries of Europe. M. Izvolsky, the Russian foreign minister, immediately protested, asserting in his note: "The problem of Bosnia and Herzegovina is European in character and therefore cannot be solved unless and until it has been freely considered by the powers that were parties to the Treaty of Berlin, and also unless the settlement decided upon has received the assent of all the powers." He suggested the holding of a European conference to consider all controverted questions concerning the Balkans. Great Britain was equally indignant, and Sir Edward Grey seconded the proposal of M. Izvolsky, drawing Count Aerenthal's attention to the fact that Austria-Hungary was a signatory of the Special Protocol of the Black Sea Conference of January 7, 1871, which affirms that it is "an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty or modify the stipulations thereof unless with the consent of the contracting powers by means of an amicable arrangement." On December 19, Austria-Hungary gave her answer to the Russian note, which note also represented the position of England, France, Italy and Turkey. The Austrian answer was to the effect that the Congress of Berlin had put no limitation upon the Austro-Hungarian occupation as to duration or jurisdiction; that Austria-Hungary had sacrificed much blood in tranquilizing the provinces and much treasure in improving them; and that the imperial-royal government could not agree to the summoning of a European conference, if the program should deal with the question of the

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annexation of Bosnia and Herzegovina in any other sense than as a *fait accompli*. At the same time Count Aerenthal answered the loud protest and claim for territorial compensation put forth by Servia with the statement that no power except the signatories of the Treaty of Berlin was qualified to raise its voice on the subject of the changes effected by the annexation. Germany announced that she would support her ally in any consequences arising from her act. It is beyond the limits of this article to describe the negotiations, representations and notes that occupied the attention of European chancelries during the next few months. No one expected Austria-Hungary to give up the provinces, but it was insisted that she should have acted in a legal manner by asking the consent of the powers with whom she had contracted in 1878. However, on March 22, 1909, the German ambassador to Russia announced that if Russia did not consent to the abrogation of article xxv of the Treaty of Berlin, Austro-Hungarian troops would invade Servia, which had called out its reserves and was preparing for immediate hostilities. Russia was compelled to submit, and the other powers followed suit. Russia's army was unprepared, England and France were unwilling to go to war, and Italy was bound by the Triple Alliance. The idea of holding a conference was abandoned.

The declarations of Bulgaria and Austria-Hungary had been immediately succeeded by one from Crete. The Cretan Chamber was convoked October 12, and by a unanimous vote it declared the union of Crete with Greece. But the Greek premier, M. Theotokis, asked for the sanction of the powers. No power wished to alienate the friendship of the new Turkey, and on October 28 the powers notified the Cretan government that its action was disallowed and that a union between Crete and Greece required their consent.

These numerous complications placed the Young Turks in a most embarrassing position. They had come into power to maintain the Ottoman empire and could not assent to any declaration impairing its authority or its dignity. They were not in a position to declare war against Austria, but they were not weaponless. A boycott on Austro-Hungarian goods was de-

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clared by Turkish merchants. This boycott at once became very popular, and the losses to Austro-Hungarian commerce were enormous. Turkey refused to yield unless she received compensation. Austria finally agreed to pay £2,200,000 to the Porte, not for the transfer of sovereign rights over the two annexed provinces, but as an equivalent for church property and other lands therein belonging to the Ottoman Porte. The Young Turks knew also that they could not fight Bulgaria, whose army was in admirable condition. Here also, however, they had other means of action. Eastern Rumelia, as legally a tributary province, had had its goods admitted free of duty into Turkey. As part of independent Bulgaria, the Turkish customs could be levied on its goods. Moreover, it was an easy thing to cause vexatious delays in the transport of Bulgarian exports to the Ægean. As a result of the Porte's attitude, Bulgaria agreed to pay to Turkey (by means of a Russian loan) £3,280,000 indemnity on account of the Eastern Rumelian tribute and railways. As to Crete, the Young Turks felt confident that they could defeat Greece in a campaign, and they announced that Cretan annexation would be considered a *casus belli*. This hastened the action of the powers noted above. On April 6, 1909, the Ottoman Parliament assented to the annexation of Bosnia and Herzegovina to the dual monarchy, and on April 19 it recognized the independence of Bulgaria. The first great crisis in foreign affairs was over.

The crisis, however, had left its mark. Many Turks found the outcome of these settlements unsatisfactory. Moreover, the agents of reaction had been preaching among the ignorant and fanatical Moslems, especially in Asia Minor, that the new government intended to Christianize them. The Kurds revolted in Armenia, the Arabs in the Yemen, and a massacre of Christians took place at Adana in Asia Minor. Finally a counter revolution broke out at Constantinople itself on April 13, 1909. But the Committee of Union and Progress acted with great courage and celerity. Mahmud Shefket Pasha, the commander of the second army corps at Salonika, was despatched to Constantinople with 25,000 men and the rebellion was quickly crushed. Abdul Hamid was deposed, the constitution suspended and martial law proclaimed. The government remained for the next three years in the control of the Committee.

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The counter revolution and its repression marked a change in the policy of the Young Turks in foreign as well as in domestic affairs. Young Turkey had been saved by the army, and the demands of the army had now to be heeded. Mahmud Shefket Pasha became minister of war. He had been educated in Germany, and he gave von der Goltz Pasha *carte blanche* in army reorganization. The influence of the army leaders was henceforth favorable to friendly relations with the Triple Alliance. Nor were the Young Turk leaders themselves averse to this, for the events of every succeeding month alienated them more and more from the Triple Entente. It was generally believed that Russia and Great Britain were determined to divide Persia between them. The boundary between Persia and Turkey had never been clearly defined, and, in view of what was happening, the Porte sent troops to occupy the neighboring Persian territory. This drew forth remonstrances from Russia and Great Britain. Moreover, the sympathies not only of the peoples of Great Britain and France but of their governments were with Greece in the Cretan difficulty. Finally, the greatest difficulty of the Young Turks was lack of money, and they could neither borrow it in France or in Great Britain nor secure the consent of the French and British governments to measures which would enable them to raise it. Turkey cannot increase her customs duties without the consent of the powers represented in the Public Debt Administration. In 1910 Austria-Hungary and Germany gave their consent to an increase in the tariff from 11 per cent to 15 per cent and also to the taxation of foreigners engaged in business. In the Cretan affair neither Austria-Hungary nor Germany acted in concert with the other great powers. So skilfully did Marschall von Bieberstein play on these various strings of the diplomatic harp that before he retired, at the close of 1910, Austro-German influence at the Porte was once more paramount. That influence was used to bring about an *entente* between Rumania and Turkey in the autumn of 1910, both of those countries being at swords' points with Greece and both fearing any increase in Bulgaria's strength. The influence of this *entente* was neutralized, however, by the drawing together of Greece and Bulgaria. This was due, in

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part, to increasing tension between each of these states and Turkey. In June, 1910, the Cretan assembly elected four representatives to the Greek Parliament; the Porte protested, and a Turkish boycott of Greek goods was declared. Bulgarian clubs in Turkey were closed by order of the Ottoman government because of their political activity, and this was resented at Sofia. Closer relations between Greece and Bulgaria were signalized and promoted by an arrangement between the Greek patriarch and the Bulgarian exarch, settling the controversies regarding the possession of the churches in Macedonia, which had always been the chief cause of contention between the two countries.

It was, however, the domestic policy of the Young Turks that proved their undoing. The counter revolution of April 13, 1909, strengthened their resolution to carry out to the bitter end the two principles upon which new Turkey was to rest, namely, the centralizing of governmental authority at Constantinople and the Turkification of all the non-Turkish elements in the empire. The execution of the former principle was sure to cause general discontent throughout the empire, even among the Moslems, for Turkish authority among Kurds, Arabs and Albanians had always been weak. This policy also destroyed the hope of autonomy aroused among the Macedonians by the Revolution of 1908. The execution of the second policy was still more fatal. Even among the Moslems it was certain to breed trouble, for the Arab has a great contempt for the Turk, and the Albanian's chief virtue is his love for his race. But to undertake to Turkify the subject Christians, burning with the hatred of five centuries of oppression and determined to be united sometime to their fellow Christians in the free states, and at the same time to seek to induce Moslems to treat as equals the disdained Christians whom they had always ruled, was to attempt the impossible. Turkey has always been organized as a religious community, ruling other religious communities which it recognizes as creeds but not as nationalities. To convert such a religious community into a true state would necessarily be a very slow process; to attempt to convert a number of such communities into a centralized state was a visionary policy.

Trouble broke out in Albania in the autumn of 1910.

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Albania has been the Ulster of Turkey. Its inhabitants are descendants of the Thracians and Illyrians driven into the mountains by the Slavic invaders of the seventh and later centuries. These hardy, warlike mountaineers have always been the bulwark of the Porte against the Serb advance; for although Catholic in the north, Orthodox in the south and Mohammedan only in the middle of Albania, they have disliked the Slav more than the Turk, and they have been willing to acknowledge the sovereignty of the sultan upon the single condition that they be let alone. Under the old régime they were generally let alone. About the year 1900 there began an intellectual awakening in Albania, due to a considerable extent to the schools that had been founded in the more civilized parts of the country by Austria and Italy for the purpose of extending their influence among the natives. The movement, which partook of the nature of a racial renaissance, was not in any way a political movement. At a convention of the leaders of the various clans it was decided that their common language should be written in the Latin script. Already there had been trouble with the Turkish government because of the refusal of the Moslem Albanians to pay the increased taxes. An order issued by the government, that only the Catholics would be permitted to use the Latin script and that the Orthodox must use the Greek and the Moslems the Arabic, produced a rebellion among the Moslem Albanians. The government resolved to subdue Albania once and for all, and a large army was despatched from Monastir to suppress the rebellion and disarm the population. At the same time, it was decided to search for and confiscate all firearms found among the Macedonians, who were much aroused by the eviction of the Christian peasantry in many districts to make room for Moslem immigrants from Bosnia and Herzegovina. The entrance of the Turkish army into Albania immediately brought Turkey into conflict with Montenegro, whose Albanian subjects ran over the border to help their brethren. But for the restraining influence of Russia at Cettinje and of Austria-Hungary at Constantinople, the two countries would have gone to war with each other. At first the Turks were successful in Albania and carried everything ruthlessly

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before them; but in the summer of 1911 the Moslem Albanians, who alone had at first rebelled, were joined by the Catholic Mirdites of the north. In September the government was forced to grant an amnesty, to permit the Albanians to carry their arms as of old and to use the Latin alphabet. These terms were accepted by the Moslems but refused by the Mirdites, who issued a proclamation of autonomy for Albania, and the insurrection continued to waste the resources of the government. In the meantime the disarming of the Macedonians had been conducted with great brutality, and refugees began to pour over the frontiers into Bulgaria and Servia, rousing the peoples of those countries to great excitement. The representations of Russia and Austria, though professedly friendly, showed the Young Turks that the days of European interference in Turkish affairs had not ended on July 24, 1908. They were about to have more forcible evidence of this.

At the Algeciras Conference and in the later dispute between France and Germany, Italian support had been given to France despite Italy's alliance with Germany. When Austria-Hungary annexed Bosnia and Herzegovina, although that action was very repugnant to Italy as endangering her influence in Albania, she made no protest but bided her time. On September 28, 1911, Italy startled most of the chancelleries of Europe with the notification that she had determined to occupy Tripoli and Cyrenaica, and she promptly sent an army across the Mediterranean to make her occupation a *fait accompli*. Whatever the press of Europe might say, no official voice in Europe was raised in protest. Diplomatically it was a matter between Italy and Turkey. Resentment was deep at Berlin and Vienna, where professions of disinterested friendship for Turkey were made; but beyond the assurance sought and secured by Count Aerenthal from Italy, that the *status quo* in the Balkans was not to be disturbed and that any war which might ensue was not to extend to European Turkey, no representation was made by any power. The Turkish government, naturally, was outraged and felt no inclination to submit. Even if it had been so inclined, submission was impossible: for the Young Turks to sign away the only purely Moslem province of the empire would have

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been to sign their death warrant. Ottoman public opinion had already become estranged from the Committee of Union and Progress because of its mistakes and failures. Turkey could not fight, for it had no navy, and though suzerain of Egypt it could not send an army across Egypt to the aid of Tripoli. But the gallant soldier, Enver Bey, who had started the Revolution of 1908, was sent with some other leaders to the aid of the few Turkish soldiers and Arabs. Turkey was able at least to prolong the conflict in Tripoli and thus to impose heavy financial burdens upon Italy. It was able also to bring ruin to the large trade which Italians had with Smyrna and other cities of Asia Minor. And this policy told. It gradually became evident to Italy that the hope of a short and successful campaign was not to be realized. With the idea of bringing greater pressure upon the Porte, Rhodes and eleven other islands of the Ægean were occupied in April and May, 1912. The Porte retaliated by expelling all Italians from the vilayet of Smyrna. The Italian government sent a gunboat squadron to threaten the Dardanelles. The Porte answered this by closing the Dardanelles to all vessels. This action was a severe blow to neutral commerce and brought forth a strong representation from Russia. Meanwhile the domestic condition of Turkey was becoming so serious that the government was compelled to enter into diplomatic conversations with Italy to end the war. These were begun at Ouchy, Switzerland, in July, but dragged along until October 12, when Italy served an ultimatum upon the Porte, giving it three days in which to agree to the Italian proposals, failing which Italy would carry the war into European Turkey. As the Balkan states were at the point of declaring war, the representatives of the Porte signed the Treaty of Lausanne October 15, 1912. By its terms the Porte renounced all sovereignty over Tripoli and Cyrenaica, the sultan retaining his religious authority over the native Mussulmans. The Ægean islands occupied by Italy during the war were restored to Turkey, on condition that reforms should be introduced in favor of the Christian population; and diplomatic and commercial relations were resumed.

It was indeed time that the war with Italy were ended. The

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internal condition of Turkey had gone from bad to worse. Most of the disinterested patriots among the Young Turks had withdrawn from the Committee of Union and Progress, and the Committee was now controlled by extremists and placeholders. In the April elections which followed the dissolution of the Chamber in January, 1912, the adherents of the Committee secured a majority, but its victory was the result of good organization and much intimidation. Its majority did not represent public opinion. Charges of corruption made in the newspapers resulted in their suppression. The treasury was empty, because of the loss of revenue due to the stoppage of trade during the war. Officials had to go unpaid, as in Hamidian days. The army was discontented, and in June a rebellion broke out in the garrison at Monastir, bringing more discredit upon the Committee. The insurrection in Albania made great headway in May and June. The condition of Macedonia was so bad that in May the old Macedonian Committee, the Bulgarian organization which had suspended its activities since the Revolution of 1908, reorganized and demanded autonomy for Macedonia. The Committee of Union and Progress could no longer withstand the pressure of public opposition, and in July it gave way to the representatives of the party of "Liberal Accord." Ghazi Mukhtar Pasha, as grand vizier, formed a ministry containing many of the best men in public life.

The new ministry met with great trials at the very outset of its career. Early in August an atrocious massacre of Bulgarians took place at Kochana. This deprived the government of the credit which it justly deserved for the sincere attempt it had made to punish the instigators of the massacre at Ishtib, which occurred in December, 1911. The ministry, however, had an unfriendly Chamber to deal with; and the dissolution of the Chamber resulted in the return of a majority of the Committee of Union and Progress, more extremist than ever in spirit. But the chief problem of the ministry was to meet the dangers that were gathering from without. In August there was a frontier battle between Montenegrins and Turks, and there were border conflicts between Bulgarian and Turkish soldiers. In the same month it became known that the apparently impos-

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sible had happened: that an alliance existed between Servia, Bulgaria, Greece and Montenegro. Conferences held by special agents of Bulgaria at Bucharest and to St. Petersburg and visits of King Ferdinand to Vienna and to Berlin were looked upon as attempts to secure assurances of non-intervention from the neighboring powers in case of war with Turkey. In September the great powers presented a collective note to the Porte, drawing attention to the miserable state of Macedonia and requesting the introduction of reforms. The Porte answered, early in October, that it would revive the Vilayets Law of 1880. It also promised the "scrupulous application" of this law, but it ignored the question of a guaranty for its execution. This was the crux of the matter. The "explanatory note" of the Bulgarian government to the Ottoman Porte concluded with the demand that the ministers of the Balkan states be associated with the ambassadors of the great powers in carrying out the reforms demanded. This was bitterly opposed by the Turkish press, and a ministerial crisis resulted in the return to power of the aged patriot, Kiamil Pasha, who had been the first grand vizier after the Revolution of 1908 and who, though not a member of the Committee of Union and Progress, was the one man in whom all parties had confidence. In the mean time it was asserted by the Bulgarian government that the Turkish army manœuvres held near Adrianople in late September were directed against Bulgaria, and "to preserve its national safety" Bulgaria ordered, October 1, the mobilization of its troops. This action was imitated by the other Balkan states, and on October 8 half a million men threatened Turkey from the north and over a hundred thousand Greeks were massed along the southern frontier. The Porte retaliated by confiscating all war material intended for the allies and by seizing over a hundred Greek merchant vessels.

The great powers had not been inactive during these events. As early as mid-September Germany and Austria-Hungary had agreed to maintain the *status quo* in the Balkans, and Austria-Hungary mobilized an army along the Danube with the avowed intention of protecting her interests in the sanjak of Novi Bazar. This action produced much irritation in Russia and resulted in

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military activity along the Galician frontier. France led European diplomacy in exerting itself to maintain peace among the great powers and localize the war. M. Poincaré, the French foreign minister, proposed on October 1 that the representatives of the great powers at the capitals of all the Balkan states, including Constantinople, present to the several governments a collective note containing three propositions: (1) the powers would condemn any belligerent action; (2) in the event of war they would permit no modification of the territorial *status quo*; (3) they would secure under article xxiii of the Treaty of Berlin reforms for the Christian inhabitants of European Turkey which would not be inconsistent with the sovereignty of the sultan or the territorial integrity of the Ottoman empire. Sir Edward Grey hesitated as to the method of procedure, and the note was not presented to the Balkan states until October 8. One hour after its receipt at Cettinje, Montenegro declared war against Turkey. The Austro-German press at once accused Russia, whose influence in Montenegro has always been paramount, of duplicity, and the danger of international complications became pronounced. The other Balkan states declined to consider the reforms promised by the powers because of their vagueness, and they presented an ultimatum to the Porte which demanded, among other things, national autonomy for Macedonia, Christian governors for the Christian vilayets, the withdrawal of Turkish troops and the substitution of local militia. The Porte replied by declaring war against Bulgaria and Servia, October 17, 1912, and immediately upon receipt of the information Greece declared war against Turkey.

Of decisive importance, as the event showed, was the relative degree of preparedness of the opposing forces in the war. The present commander of the Bulgarian army is its real creator. In 1903 General Savoff was made minister of war and undertook the reorganization of the military forces. In the ten years that have intervened he has developed what is probably the finest fighting engine of its size in Europe. His success would have been impossible, however, without the support of the Bulgarian people. Nowhere in history has there been a more remarkable instance of an entire nation—not the government alone, but the

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whole people—yielding itself to the realization of a single aim. For since 1903 Bulgaria has devoted its entire strength to one purpose, to make itself ready for this one inevitable war. In Greece also there has been a remarkable recuperation. As a result of the Cretan fiasco of 1908, the army rebelled in 1909, and for a time the state appeared upon the brink of dissolution. The crisis, however, brought forth the needed man. M. Venezelos, one of the really great men of Europe to-day, was made prime minister and undertook the rehabilitation of the state. His first task was the reorganization of the army. He borrowed a general and several staff officers from the French army, and, as the result of excellent financial administration, he was able to provide the necessary artillery and equipment. His second great task was to bring about a union of the Balkan states; and here again he was successful, owing largely to the receptive attitude of that other skillful Balkan diplomatist, Ferdinand of Bulgaria. Moreover he found Servia prepared. After her display of anger in 1908, following the Austro-Hungarian annexation of Bosnia and Herzegovina, Servia settled down to a period of recuperation and, under the leadership of M. Pashich, consolidated her resources to procure the money necessary to refit the army. Montenegro was always ready to undertake the kind of warfare necessary in that bleak mountainous region and was fairly well supplied with war material, though of older pattern, given in the past few years by Russia and Italy. In each of these countries the people were one with the government in realizing the necessity for sacrifices to attain their object.

Against the four well equipped and well led armies, numbering seven hundred thousand men, which the allies were able to put into the field, the Porte had, distributed throughout Turkey in Europe, about half as many men. The Turkish army was ill-organized, badly officered, poorly equipped and scarcely fed at all. Abdul Hamid had been afraid to hold field manœuvres and firing practice on a proper scale, and the reforms of von der Goltz Pasha were worked out on paper rather than in the field. The Young Turks had removed most of the old officers and replaced them chiefly with inexperienced young men who dab-

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bled in politics and who did not have the confidence of the troops. At the outbreak of the war the Italian fleet, and during the war the Greek fleet, prevented the carrying of troops by sea from Asia Minor to Constantinople, and the land transport was beneath contempt. The commissariat was worthless and the troops went into battle half-starved. Within three weeks of the declaration of war, Turkey in Europe was almost swept bare of Turkish troops, save in the three fortresses of Adrianople, Janina and Scutari, and the Bulgarian army was in front of the Chataldja fortifications which protect Constantinople.

Europe was astounded. In Austria and Germany a Turkish victory had been confidently expected, and the most fervent supporters of the Balkan states had not anticipated such rapid success. M. Poincaré suggested the holding of a European conference, in which the Balkan states should be represented and at which the political changes in the territories occupied by the allies should be recognized and the sultan's sovereignty over a strip of territory around Constantinople guaranteed. This was rejected as being too radical, and the war continued. Before December 1 the Servian army (contrary to the express prohibition of Austria) had occupied Durazzo on the Adriatic Sea; the Greeks had taken Salonika; but the Bulgarian attack on the Chataldja line had been repulsed. On December 3, Turkey on the one side and Bulgaria, Servia and Montenegro on the other signed an armistice; Greece, however, refused to do so, hoping to bring about the fall of Janina and to secure possession of the islands of the Ægean by means of its fleet. A Peace Conference, in which all the states at war were represented, met at London, December 13. Upon the invitation of Sir Edward Grey, a conference of the ambassadors of the great powers at London was also opened, to keep in touch with the progress of the negotiations.

At the Peace Conference, largely through the influence of M. Venezelos, the allies agreed to act as a unit in their negotiations with Turkey, to present their demands in their entirety and to leave the division of the conquered territory among themselves for subsequent consideration. Their peace proposal was a very simple one: the Porte should cede to the allies all European

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Turkey west of a boundary line running from Midia on the Black Sea along the river Erghene to the river Maritza and thence to the gulf of Enos on the Ægean, and all the Ægean islands. On December 28, the Turks presented their counter proposals: the whole vilayet of Adrianople was to remain under the sovereignty of the sultan; Macedonia was to become an autonomous principality under Turkish suzerainty; Albania was to become an autonomous province under Turkish sovereignty; and the status of Crete was to be determined solely by Turkey and the protecting powers which had maintained the international control. These terms, which had probably been presented only as a basis for future bargaining, were at once rejected by the allies. On January 1, 1913, the Turkish delegates presented their "irreducible minimum": the vilayet of Adrianople was to remain under the sovereignty of the sultan, but Turkey and Bulgaria were to negotiate any rectification of frontier recognized by them as necessary; all *occupied* territories west of the vilayet of Adrianople were to be ceded to the allies, but the determination of the boundaries and status of autonomous Albania was to be submitted to the decision of the great powers; Turkey was to retain possession of the Ægean islands, but to discuss with the great powers questions relating to them; and Turkey would accept any decision that should be reached by the protecting powers with regard to Crete. These terms also were at once rejected by the allies, because they suggested separate agreements and because the cession of territory seemed to them wholly inadequate.

The conflicting proposals of the allies and of Turkey brought out prominently the chief problems of the conference: (1) the status of Adrianople, the possession of which both Bulgaria and Turkey consider essential to their national safety; (2) the status of the Ægean islands, which are inhabitated by Greeks who demand to be united to the mother country, but of which some (*e. g.* Imbros, Tenedos and Lemnos) are asserted to be necessary to Turkey for the protection of the Dardanelles, since they command the entrance to the straits, while others (*e. g.* Mitylene) are part of Asiatic Turkey; (3) Albania, whose boundaries have always been in doubt and through the

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middle of which Servia demands a strip of territory leading to Durazzo. In addition to these difficult problems there are others to be met, such as the proportion of the Ottoman debt to be assumed by each of the allies and the status of the railways which, though nominally the property of the Ottoman state, are really owned by foreign companies, chiefly Austro-German. Truly, the allies showed great wisdom in deferring the greatest of all the problems, the division of the spoils, to subsequent consideration.

During the whole month of January, 1913, the peace negotiations dragged on without result, chiefly because of the dilatory tactics of the Turkish delegates, who were evidently sparring for time. The repulse of the Bulgarian attack on the Chataldja lines and the failure of the allies to take Adrianople, Janina or Scutari had greatly stiffened the war spirit at Constantinople, and the military leaders were strongly in favor of resuming hostilities. This was contrary to the views of the grand vizier, Kiamil Pasha, and most of the ministers, but no one wished to appear in the unpopular role of peace advocate. On the other hand, the maintenance of the large armies at the front was an enormous drain upon the resources of the Balkan states. Moreover, Rumania was demanding of the Bulgarian government guarantees for compensation in return for her neutrality during the war. The extent of her demands was not made known. She has always been desirous to rectify her southern frontier, and such a rectification would probably deprive Bulgaria of the triangle from Silistria to Varna, including the former strategic city and the latter valuable port. These considerations impelled the delegates of the allies to announce, on January 14, that if Turkey did not speedily come to terms the allies would resume hostilities.

In the mean time the conference of the ambassadors of the great powers had not been idle. When that conference assembled, Austria-Hungary had made plain her position with reference to the Servian demand for a port on the Adriatic with a hinterland. In the slogan of the allies, "the Balkan peninsula for the Balkan peoples," Austria found a principle which could be utilized against their demands. The Albanians are a Balkan

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people entirely distinct from Slavs and Greeks and particularly unfriendly to the Slavs. The Congress of Berlin in 1878 had given a part of their country to Montenegro, and that mistake had afterwards to be rectified after much bloodshed. It would be as suicidal now to place any of the Albanians under the Slavs as to put back any of the Slavs under the Turks. Albania must be made an autonomous state, and that it may live in peace it must possess its seaboard intact. In this position Austria was seconded by Italy, which has interests in Albania as important as those of Austria-Hungary. Neither state can afford to allow the other to possess the eastern shore of the Adriatic, and both are resolved that it shall not fall into the possession of another possibly strong power. On December 20 it was announced that the ambassadors had recommended to their governments, and the latter had accepted, the principle of Albanian autonomy, together with a provision guaranteeing to Servia commercial access to the Adriatic. The mode of access remains to be determined. Probably Servia will receive the use of a harbor and a guaranty of the duty-free conveyance of her exports and imports over the railway leading to it.

The threatened failure of the negotiations between the allies and the Turks caused great concern in the conference of ambassadors. The latter finally agreed to recommend to the various governments represented that their ambassadors at Constantinople should present a collective note to the Porte urging it to come to terms with the allies. After considerable delay, because of hesitancy upon the part of Germany, the collective note was presented to the Porte January 17, 1913. The note advised the Porte to bring the war to an end and "to consent to the cession of the town of Adrianople to the Balkan states, and to leave to the powers the task of deciding upon the fate of the islands in the Ægean Sea." If the Porte yields consent to these propositions, "the powers will arrange a settlement of the question of the islands of the Archipelago which will exclude all menace to the security of Turkey." Three days later the Porte answered that so momentous a decision would have to be made by the Grand Council of the Ottoman Empire. On January 22 the Grand Council voted almost unanimously to

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accept the advice of the great powers. This decision caused great commotion in Constantinople. It was unpopular in the army and was especially resented by the Young Turk officers. The Committee of Union and Progress determined to prevent its execution. On the morning of January 23, Enver Bey, accompanied by other officers and by a mob, appeared at the Porte and demanded the resignation of the ministry. Kiamil Pasha and his colleagues at once resigned, and representatives of the Committee of Union and Progress took their place, with Mahmud Shefket Pasha as grand vizier. The peace delegates of the allies in London agreed to wait a week for the reply of the new ministry to the collective note of the powers. As none was forthcoming, on January 29 they notified the Turkish delegates that the war would be resumed at the end of four days, the term after notice provided in the armistice. On February 1 the Turkish reply to the note of the powers was published. Its two chief points were that the question of the Ægean islands should be left wholly to the powers, and that the city of Adrianople should be divided, the territory on the left bank of the Maritza river, which contains the great mosques and most of the Mussulman population, remaining Turkish. On February 3 the representatives of Great Britain and of Germany at Sofia presented separate notes to the Bulgarian government. The British note counseled prudence and moderation. The German note was much sharper: it stated that in the opinion of the German government the reply of the Porte was adequate and that the Bulgarian government was not justified in maintaining an obstinate attitude. The Bulgarian government answered at once to the effect that the Porte was fully aware that the allies would agree to the retention by Turkey of the mosques in Adrianople and the maintenance there of a representative of the caliph with exterritorial privileges, and that the answer of the Porte to the collective note was but a subterfuge to prolong the discussion, which had already lasted two months without result. On the same evening, February 3, hostilities were resumed at Adrianople.

Whatever may be the nature of the treaty of peace, there can be no doubt that the Balkan war will have a profound influence

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upon European diplomacy. The division of Macedonia will sorely try the union of the allies. If they divide it amicably, the question remains whether they will modify their traditional ambitions to make them conform to accomplished facts. If they can do this, the Confederation of the Balkans may not only be permanent but may take its place as a seventh great power in European diplomacy. Whether Turkey can pull itself together, consolidate its resources and develop the immense possibilities of its Asiatic possessions remains, of course, to be seen. Whether it is not better for Turkey to make the enemy of yesterday the ally of to-morrow and become a member of the Balkan Confederation, should the Confederation survive, is another question. Turkey must needs have friends, and in international relations there is no unselfish friendship: recent events have shown that the friendship of any of the great powers is determined and controlled solely by the interests of that power. A similar problem will confront Rumania.

It can hardly be doubted that the Turkish *debâcle* is a blow for the Triple Alliance. In the event of a general European war much hope had been placed by German and Austro-Hungarian publicists upon the friendship and even support of Turkey. And the Balkan peoples are fully aware of the mean view of them hitherto held at Vienna and Berlin. Nevertheless their statesmen have shown such marked ability and restraint during the recent crisis that there is good ground for believing that the Balkan states will refuse to be made the catspaw of Russia or of any group of powers. But prophecy in the field of politics is proverbially hazardous, and to forecast the future of the Balkan states is a futile undertaking.

STEPHEN P. DUGGAN.

COLLEGE OF THE CITY OF NEW YORK.

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PATTEN'S RECONSTRUCTION OF ECONOMIC THEORY[1]

THE first reading of Professor Patten's essay leaves one gasping. Surely this is post-impressionism in economics! Where is the unity? What is the drift? Brilliant and startling notions abound, but how are they related to each other? The reviewer, however, after reading the essay carefully three or four times, has found it, not indeed a unit, but at all events a collection of fairly distinct units, and he suspects that the author could, if he chose, point out relations that would make a unit of the whole.

There is, first of all, a delightfully personal introduction, in which Professor Patten reviews certain phases of American economic theory for the past thirty years—"*quorum pars tertia fui*"—and contrasts his own attitude with those of Professors Giddings and Clark. Professor Clark is "rational and "monistic"; Professor Patten is "pragmatic" and "pluralistic." Professor Giddings, as a sociologist, necessarily holds, according to Professor Patten, that economic laws depend on more fundamental sociological laws, while he, as an economist, maintains that economic phenomena are primary. Monism in economics has failed. Neither Professor Clark nor Professor Marshall has succeeded, the author contends, in deriving dynamic laws from static laws. The Austrian effort to develop a general scheme of economics from the principles of utility has failed. Monism as a scheme survives only in sociology, where, however, it is coming out more prominently than ever before.

The reviewer questions the correctness of these contrasts. Doubtless the Austrian utility theory of economics is monistic, and the reviewer would agree that it has failed. But Professor Clark, if one takes into account his *Philosophy of Wealth* and the later chapters of his *Essentials of Economic Theory*, can hardly be called an economic monist. And if pragmatism means using scientific constructs as tools of thought, with a full consciousness that they are mere tools, then surely Professor Clark's "static state," based on "heroic abstraction," is essentially an employment of the pragmatic method. As to Professor Giddings, the contrast seems even less satisfactory. That "consciousness of kind" is *the* distinguishing fact and *the* peculiar theme of

[1] The Reconstruction of Economic Theory. By Simon N. Patten. Philadelphia, American Academy of Political and Social Science, 1912.—99 pp.

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sociology Professor Giddings would not now maintain; and there are few economists who stress more strongly than he does the significance of economic factors. The reviewer questions, too, the principle of differentiation as between economics and sociology which Professor Patten implies in this latter contrast. The notion that the economist is bound to have one theory, while the sociologist is bound to have a different theory, to explain the same problem, is a confession of the bankruptcy of social science. If both are scientific, why can't they have the same theory about a given problem? The differentiation should come in the problems themselves. Neither has any monopoly of any set of facts which may be used for purposes of explanation.

Two other points are noted in connection with the development of American theory: one, the rise of the economic interpretation of history; the other, the increasing influence, since 1900, of socialism. In considering the first of these matters, Professor Patten gives an interesting statement of the essence of his own "genetic" or "dynamic" viewpoint in economic theory: "static" laws can be determined under any group of social conditions, but dynamic laws can be found for any given phenomenon only by a study of the particular historical epoch in which the phenomenon is prominent. The various dynamic elements become prominent one after the other, and each gives an epoch its distinguishing character. History thus becomes a series of sharply defined epochs, each presenting itself in contrast with and in opposition to its predecessor. This notion, more fully developed in other parts of the essay, seems to have kinship with Ward's "sympodial evolution," and with the Hegelian dialectic. The rise of socialism Professor Patten thinks due in large part to Professor Seligman's *Economic Interpretation of History*, which he calls the "Bible of American Socialism." This view will probably commend itself neither to Professor Seligman nor to the American socialists. Socialists go to Professor Seligman rather than to Marx, Professor Patten declares, because the former has taken away the materialistic setting from the economic interpretation of history, and the American socialist is sentimental rather than materialistic.

Chapter ii is a discussion of certain contrasts in philosophical backgrounds and in emotional reactions. It is interesting, even though hard to understand. And the reviewer would question the inevitableness of the contrast which puts "spiritual or genetic" on the one side, while "material or structural" constitutes the other term. It would seem that the contrast between spiritual and material should not be identified with the contrast between genetic and structural without some

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argument to justify it. And "pragmatic and hence economic" in contrast with "dogmatic and thus sociological" is, again, not self-evident.

Professor Patten's estimate of Marx is acute and exceedingly interesting. "Marx Germanized English economics. . . . But for the prejudices of the German economists, these ideas would have become commonplaces in Germany, and would thus have prevented Marx from gaining position by utilizing them." Marx replaced the "theological" setting which these ideas had in English thought with the "material view" then prevalent in Germany. The theory of harmony of interests between laborers and employers Marx replaced with the doctrine of class struggle. The laborers were to be the surviving class into whose hands society was to come. "This position, however, became untenable through the rise of the theory of evolution. Darwinism does not prove that the world belongs to rabbits. It proves that the rabbits belong to foxes." From this comes Marx's dilemma, and Professor Patten holds that much of Marx's later work consists in a further and unsuccessful effort to solve it. Professor Patten does not anticipate any such growth of socialism in this country as has taken place in Germany. "Assume that Germany is not ahead of us in development, and her 3,000,000 socialists afford no indication that our progress will bring a like development. Are we pacemakers in economic evolution or is Germany?" Other chapters are given to "Types of American Socialism," "Voluntary Socialism" and "The Avoidance of State Socialism."

American economic thought has roots both in Germany and in the economics of John Stuart Mill. Discussions of the errors which Professor Patten sees in both of these sources, together with an explanation of the origin of these errors in the personal and national environments of Mill and the German economists, occur in the earlier chapters. The reviewer must be content merely to mention these interesting side-lights.

The central features of the essay are the attack on "natural law" and "static" theories of distribution and the effort to reconstruct the theory of distribution on a genetic basis. Not only theories of causation but categories also are to be reconstructed. The terms wages, interest, profits and rent are to be given up and new categories substituted. On this point Professor Patten's argument is not convincing, because he uses the current categories in unusual ways. Wages, for him, seems to mean the result of "toil," and toil seems to be identified with pain (pages 36–37, 39). Machine workers get, not wages, but rent of ability. Criticism of the familiar categories, when unfamiliar

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meanings are given them, seems to be beside the mark. The new categories which Professor Patten wishes to substitute appear to be chosen on the following principle: he wishes to emphasize certain *causes* affecting distribution which have not been adequately recognized in the past. For each new *cause*, he wishes a new distributive *share*. The categories, in other words, are to be chosen, not with an eye to the types of income actually received, but with a view to the causes determining the amounts of income. But this, the reviewer would suggest, makes agreement on terminology almost impossible, because it requires us first to come to agreement in our theories of causation. Definitions and categories should be, as far as possible, common ground. It is easier for us to agree what our problems are than to agree how they are to be solved. The distributive shares recognized in contract relations and actually received in practice constitute the problem, and hence constitute a norm for testing categories. That this norm requires changes in categories from time to time and that the prevailing categories do not exactly correspond with this norm the reviewer grants, but he maintains that they approximate it much more nearly than do Professor Patten's new categories. There may be scientific reasons which make departure from this norm inevitable, but the case must be made out. There is, however, a more fundamental difficulty: to make a separate share for each cause is impossible, because no share depends exclusively on one cause, and no cause exhausts itself on one share.

More significant than the question of categories is the question of causes. Professor Patten would reject the theories which make distribution depend on natural law or "static" law. He would introduce the elements of struggle, monopoly, legal changes, changes in education, in morals, in standards of consumption; "distribution is thus complex, following no one law." As a criticism of the Austrian effort to juggle the whole story out of "marginal utilities," or of other "monistic" explanations of distribution, Professor Patten's case is made, even though he wastes part of his ammunition on discarded doctrines like the wages fund. In passing, a curious logical lapse may be noted in his criticism of a variant of this doctrine. The argument criticized is that superwages for one group of laborers come out of capital, hence out of the wages fund, and hence out of the wages of other classes of laborers. Professor Patten objects (1) that superwages come, not out of the capital in the wages fund, but out of superprofits (page 42), and (2) that capital comes, not from savings, but from superprofits (page 43). Had he been content with one of these propositions

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alone, his case would be formally clear, but both points together put him back into the original difficulty. For the case now stands: ordinary wages come from capital, from the wages fund; capital comes from superprofits; hence wages come ultimately from superprofits; but superwages come from superprofits, hence from the same source from which ordinary wages come; hence they leave less for ordinary wages. But the general doctrine here is significant and timely. It is that there are no natural laws standing in the way of radically increasing the income of the laboring classes at the expense of the incomes of other classes; that the defenders of the existing distribution of wealth cannot hide behind a natural law, with the pious wish that it were different.

One factor which Professor Patten considers vital as working for a redistribution of wealth is "budgetary pressure." The idea which the phrase involves may be stated as pressure of a rising standard of living upon less rapidly expanding or even diminishing resources, as measured in family budgets. The budget plays a double rôle. In the first place, the budget is a registering machine, for scientific purposes, which is to supplement wholesale price quotations. Wholesale prices fail to reveal and measure all the necessary elements. But more significant is the psychological relation of budget and budget-maker. Only the man of imagination and moral energy will keep books and make arithmetical plans for the disposal of his family income. A budget-making laboring class is a progressive laboring class. The budget reacts in enhancing the very qualities which made it possible: imagination and definiteness of purpose are increased by it. The budget-maker knows definitely his grievances. When he acts, he acts toward a definite end. Budgetary pressure works in two main ways: it leads directly to political and other organized activity to increase class incomes directly; and it leads to the better education of the children of a family, in order that their income, added to the father's income, shall remove the deficit in the budget. Budgetary pressure leads more members of the family into industry. The going of a daughter into industry makes the father interested as a citizen in the general problem of woman labor, where before he was indifferent. To say that the static theory will account for the increase in family income due to better education of children, that the doctrine of class struggle is likewise not new, and that we already knew that wants are dynamic agents, by no means takes away the originality and significance of Professor Patten's emphasis on the phase of social psychology he has described. His doctrine is more than a mechanical synthesis of these elements.

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The remedies for budgetary pressure which Professor Patten himself believes feasible we need not here consider. His general social program is well known. But it is worth while to criticize his view that there is no hope of relieving the pressure through lowering prices. The references to price theory in the book are frequently unsatisfactory. Thus, on page 48, he sets in contrast two doctrines which are perfectly consistent: one that the reduction of prices is a good thing; the other that prices in general can neither be raised nor lowered. The apparent inconsistency comes from the ambiguity of the word "price." In the first proposition, prices mean money-prices; in the second proposition, prices mean ratios of exchange without reference to any standard, or, in Ricardo's phrase, "relative values." On pages 60–61 the author maintains that

> low prices are the index of low values of personal services. The family budgets lose, therefore, on the income side *all* the savings that low prices bring, while the gains from low costs accrue to the benefit of the replacement fund and hence raise profits at the expense of personal income. Reductions in prices thus increase the budgetary pressure. The relief must come from other sources.[1]

But why must personal incomes fall because prices fall? Suppose prices fall because increased personal efficiency leads to larger products? Suppose there is a larger volume of capital, and a lower interest rate? Suppose monopoly profits are cut out in the interests of the consumer? Are wages the only element in expenses of production? Are there not a host of alternatives which would prevent the incomes of the laborers bearing the whole burden of falling prices?

Agreeing with Professor Patten in very much of his constructive work in the analysis of the factors—social psychological factors—affecting distribution, the reviewer cannot agree that his doctrine necessarily excludes the current "static" price theories of distribution of Professors Clark, Fetter, Fisher, Boehm-Bawerk, and Marshall. Professor Patten does not indeed directly criticize the writers named, but the drift of his argument seems to be that, since he gives a different sort of account from theirs, the truth of his view would exclude the correctness of theirs. But to the reviewer the two lines of explanation seem complementary. Professor Patten is studying the genetic process; the price theories are concerned with the cross-section picture. What Professor Patten presents is qualitative merely; before the genetic elements

[1] The italics are the reviewer's. Compare this with the doctrine at the top of page 43 of the essay. The reviewer is unable to reconcile the two statements.

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can become quantitatively measured, they must be studied in their equilibria with each other, must be compared with each other, must be measured in price terms. The price theories are less fundamental, but are also more exact, than theories of the sort Professor Patten presents. That the price theories have considered too few elements, that they have often been based on erroneous value concepts, and that they have claimed more fundamental validity than they are entitled to, the reviewer himself would insist; but he would also insist that they are necessary if the theory of distribution is to be put into quantitative and usable shape.

Professor Patten's essay, like most things that come from his pen, has accomplished its purpose. It has stimulated thought. A session of the American Sociological Association and a session of the American Economic Association at Boston last December were given over to its discussion. Few men read what Professor Patten writes without changing their opinions on the points discussed—not necessarily changing them in the direction that Professor Patten indicates, but none the less changing them. While the essay is in parts difficult and involved, it is exceedingly interesting. The personal tone is attractive, the frank recantation of many of the author's earlier assertions is courageous and admirable. All told, it is a noteworthy book.

B. M. ANDERSON, JR.

COLUMBIA UNIVERSITY.

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BERGSON'S PHILOSOPHY[1]

IT is fitting that political science should reckon with all the major elements in our social consciousness, and Bergson has made philosophy one of the major elements. At least so it is in France, and to some extent elsewhere in Europe. Forces so far apart as syndicalism on the one hand and neo-catholicism on the other have drawn, or sought to draw, inspiration from his teaching. It is a work of genius to have made metaphysics not merely a vogue but the basis of something like a cult. Neither Schopenhauer nor Nietzsche has swung so fully into the focal center of a social movement. Bergson's philosophy touches the heart of that age-long striving from obscurantism to rationalism—touches and partly benumbs—and challenges the confidence of science. Hence it is acclaimed and condemned from all sides, and for all kinds of reasons. It has a negative, critical side, and a positive. On the negative, it boldly asserts that the rational processes of our intellects cannot comprehend reality; on the positive, that life itself can produce a kind of intuitive comprehension of just what intellect misses. We can see the drift of this by a slight analysis of his treatment, stressing these two aspects.

The essence of Bergson's theory of the limitation of reason, as presented in his *Creative Evolution*, is that thought cannot comprehend

[1] Time and Free Will. An essay on the immediate data of consciousness. By Henri Bergson. Authorized translation by F. L. Pogson. New York, The Macmillan Company, 1910.—xxiii, 252 pp.

Matter and Memory. By Henri Bergson. Authorized translation by N. M. Paul and W. S. Palmer. New York, The Macmillan Company, 1911.—xx, 359 pp.

Creative Evolution. By Henri Bergson. Authorized translation by A. Mitchell. New York, Henry Holt and Company, 1911.—xv, 407 pp.

Laughter. By Henri Bergson. Translated by C. Brereton and F. Rothwell. New York, The Macmillan Company, 1911.—vi, 200 pp.

Introduction to Metaphysics. By Henri Bergson. Authorized translation by T. E. Hulme, revised and enlarged by the author. New York, S. P. Putnam's Sons, 1912.—92 pp.

Introduction to a New Philosophy. By Henri Bergson. Translated by Sydney Littman. Boston, J. W. Luce, 1912.—108 pp.

Critical Exposition of Bergson's Philosophy. By J. McKellar Stewart. New York, The Macmillan Company, 1911.—x, 304 pp.

Modern Science and the Illusions of Professor Bergson. By H. S. R. Elliot, with a preface by Sir Ray Lankester. London, Longmans, Green and Company, 1912. —xix, 257 pp.

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life, and life is the main thing in the universe. The understanding, according to the doctrine of evolution, has been evolved as an adjunct to action. Hence it moves easily among materials and can deal successfully with solids. Bergson grants it in this sphere the possibility of even getting beyond symbols to actuality. The mathematical and physical sciences are sciences in the fullest sense of the word. But life itself falls into categories which the faculty of the understanding cannot supply. Space relations are quantitative, and with them the intellect can deal; but time furnishes qualitative changes which eternally elude the investigator. Life, bound up so thoroughly with time, thus escapes explanation, because it is always becoming something different. It is a creation in time. The inanimate has no history, simply because time makes no difference to it. Its change can be repeated. Life, on the other hand, is a succession of new phenomena. No present repeats the past, no future the present. That is why it has a past and a future. But, says Bergson, if life is a continuous process of the planting of these new phenomena, by which it is apprehended, in the heart of every fleeting moment, it is itself a disturbing, explosive force, exercising a creative power in the universe. Since change involves the new, the process of change—life—is therefore a sort of creation. Creation, however, is incalculable. The *élan vital*, the life impulse, is the basis of existence; and the nearest that one can get to describing it is in terms of itself. So Bergson rejects mechanism, claiming that it neglects the rôle of time and assumes that incalculable forces may be calculated. The line he draws between the animate and the inanimate he regards as impassible from that side. Teleology, on the other hand, the argument that an intelligent purpose underlies the evolution, is treated with incisive and convincing refutation.

Now, continues Bergson, the two most successful applications of the creative life impulse are instinct on the one hand—as developed, say, in ants—and intelligence on the other, as in man. There is nothing more novel and interesting in Bergson's whole scheme than this balancing of these two most perfect products of evolution—ants and men. The direction of their achievements, however, Bergson puts in entirely different worlds. Instinct and intelligence are radically different. Instinct, he says, deals with things, intelligence with their relations, though neither one exists quite by itself. This is the more general form of the statement that intellect converts matter into instruments or tools, while instinct operates directly, without their intervention. This distinction, of course, makes pure instinct absolutely incomprehensible,

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as it eliminates it from the field of consciousness. Man can never quite understand an ant. And since thought is unable to understand instinct, it is cut off from comprehending a large element of life itself.

The same distinction between instinct and thought enables Bergson to limit the scope of intellect even as applied to matter; for intellect deals, not with substance, but with relationships, and therefore never meets more than half of the problem. Moreover, following up the argument, we see how poorly even the relationships are apprehended. Our knowledge comes to us in cinematographic glimpses, not as a flux, which is the real character of change. We human beings are interested only in positions and juxtapositions, and we have a clear conception only of immobility, whereas solids, as we are now learning, are in constant movement—are, indeed, movement itself. Extension is continuous, but we break it up. Materiality is timeless, and thought works in time. So "as spirit grows more intellectual, matter grows more material."

But now we come to the thing which makes Bergsonism a militant philosophy. For thought, he says, is after all relatively successful in dealing with matter compared with its incompetence to deal with life. Here the fixity of its concepts, its cinematographic impressions, are entirely inadequate. "By nature the intellect is characterized by an inability to comprehend life." From the standpoint of life, matter, which is timeless—at least when viewed by rational consciousness on its old mathematical bases—and reason, which cannot comprehend change, are both an arrest of its processes. So we arrive at the paradox that life is interrupted by its own creation, intelligence—the creation, in fact, which indicates the tendency of the whole creative process!

Where, then, shall we turn? To intuition. Now what does Bergson mean by intuition? Not the wayward fancies of a dreamer nor the revelations of a mystic, he tells us, but the pure vision that comes from the inner self, such as the genius reveals in art. There is perhaps no clearer statement of what he has in mind than in that famous passage in *Laughter* in which he discusses the nature of art.

> From time to time, in a fit of absent-mindedness, nature raises up souls that are more detached from life. Not with that intentional, logical, systematical detachment—the result of reflection and philosophy—but rather with a natural detachment, one innate in the structure of sense or consciousness, which at once reveals itself by a virginal manner, so to speak, of seeing, hearing or thinking.

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This is the way life itself may reveal its secrets. Although Bergson expressly denies that his philosophy connects with art rather than with science, his presentation of the doctrine leaves no doubt as to what are its affiliations.

This scanty survey of a large field cannot do justice to the skill in dialectic, the lucidity in exposition and the warmth of sympathetic insight with which the philosophy is conveyed. Nor does it indicate how many illuminating turns the new thought is made to take, how many vital problems it touches. Obviously, then, any critical estimate must be even more unsatisfactory. But since we are rather more interested in Bergsonism than in Bergson, we may point out that it is this last, positive side of the philosophy which gives most comfort to those who are finding comfort in these speculations. For as intuitions are peculiarly irresponsible and respond to all kinds of environment, the neo-orthodox of every faith can accept the illumination of intuition in the way they most prefer, including subliminal senses and sixth senses, along with the more sober illumination that does not shock the common sense. Bergson's own illumination is of this more restricted kind; and this, combined with the rather negative, polemic use he makes of it in the *Creative Evolution*, has apparently blinded some of us to its possibilities when once let loose in a society loaded to the brim with intuitions of another sort—the heritage of untold centuries of sentient adjustment.

It was surely a triumph of dialectic to have forced such a matter as intuition to the foreground of philosophic discussion; but it was an even greater triumph to proceed to argue from it and still give the impression that the argument was an induction. If intuitions are valid we have reached the truth of things before the reason has time to get started. It can only manufacture justifications for what is already in our possession. The intuitions, moreover, so far as they serve as bases of knowledge, can justify themselves only by other intuitions. For instance, Bergson criticizes our mental inability to conceive of the process of nature as one of flux. But science has already given us much reason to suspect that the flux which his intuition calls for does not really exist. The only radiation we know is wave motion, the nature of which has been apprehended not by intuition but by reason, as any of us will recall from our earliest experiments in physics. When, therefore, Bergson berates our rational processes for their failure to conceive of flux, he postulates a difficulty which reason has a right to deny at the start. It must not be supposed that Bergson himself has failed to notice the bearing of such facts. He confesses at present

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that he tends toward a belief in the pluralistic character of change, although, from his analysis of rest as the complex, secondary state built out of change itself, it is hard to see how he can do so. But, in any case, it is the caution of that criticism which he tends to disqualify from its office, the criticism of scientific rationalism, which forces the admission of uncertainty. Without that caution, the intuitive process of his philosophical method seems to be much the same thing as we have long been familiar with. "Sharpened perception," left to itself, can develop as with neo-Platonists or Gnostics into an illumination whose fitful glare distorts the phenomena it lightens. It was such intuitionism that furnished to theologian and scholastic, from Alexandria to Monte Cassino, a "truth" which the profane intellect could never attain. Isidore of Seville, the encyclopædist of the dark ages, registered his ignorance with complacency, falling back upon a sixth-century intuition of the vanity of the intellectual effort to compass reality. Profane knowledge was to St. Bernard, as later to Calvin, a "welter of error," because it did not fit the intuitions springing from his monastic vital impulses. It is, in a way, quite unfair to Bergson to classify him with such obscurantists, for his own intuitions are under closest rational control; nor can he fairly be held accountable for the vagaries of his followers. But Bergsonism has already gone pretty far in this direction, and it is time the trend was pointed out.

In this connection one of the most interesting developments is the adjustment forced upon pragmatism by Bergson. Nowhere is the practical character of scientific thought more successfully criticized than in the *Creative Evolution*, the first treatise on philosophy to catch the full significance of the Industrial Revolution. But if practicality gives a warp to thinking which distorts concepts and falsifies reality, how can *value*, which is practicality incarnate, be the test of truth? It is, surely, rather the test of untruth. The paradox should not be forced; but it suggests itself. It is by clarification of perception, directed upon its problem with virginal aloofness and without preoccupation that one may reach an appreciation of reality, says Bergson. Rational thought deludes us because it is the continuation of biological adjustments. It follows that the values which are apprehended in its grapple with reality are but the shadows of distortions. It is a singular illustration of the mystical character of much recent philosophy to find pragmatism and Bergsonism frequently under the same roof.

Of the books before us, *Time and Free Will* is a translation of *Essai sur les données immédiates de la conscience* (1889), *Matter and Memory* is a translation of *Matière et Mémoire* (1896). In these books

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one has already the fundamental contributions of the new philosophy, especially the most original and satisfactory proposition, that of the reality of duration. *Creative Evolution*, which is separated from the first of Bergson's treatises by an interval of eighteen years, is now too well known to need description. But only those who come to it prepared by the earlier works can quite catch the drift of the closely-knit argument with which it opens, where the author almost takes for granted the acceptance of his theory as to the nature of time. It is interesting to see how the whole Bergsonian scheme is embedded in the little essay on *Laughter*—for laughter, in a word, is the reaction of life when it runs upon mechanistic situations in contrast with it. The *Introduction to a New Philosophy* and the *Introduction to Metaphysics* are different translations of an article which appeared in a review in 1903, the former being a rendering of the original article, the latter an enlargement and revision by the author. The rather misleading title given to the unauthorized translation of the unrevised essay was apparently chosen to suggest its claim to be regarded as the primary introductory statement of Bergson's philosophy, but this title is one that the author never sanctioned. The book summarizes and develops the idea that concepts are static and so envelop objects as to conceal that essential changeful character which intuition may reveal. Metaphysics is the scope of this active curiosity.

According to the bibliography just published by the Columbia University Press, some 417 books and articles have already appeared concerning this new philosophy. Among these two only can be characterized. Mr. Stewart's exposition of Bergson's philosophy as a whole is thorough, presenting a careful and detailed analysis before attempting to criticize. He rejects intuitionism and elaborates the question of method. It is a well written and helpful criticism. Mr. Elliot's book, on the other hand, is as red within as the cover outside, as one may surmise from the title. It is too impatient to be just, although there is a fairly good summary of Bergsonism in the opening part. Hostile scientists attack mainly a section of the new philosophy which we cannot develop here, the frank rejection of mechanism. They also query the treatment of instinct and the evolutionary apparatus. Undoubtedly this is a field where new knowledge is more needed than speculation. But, as has already been intimated, something more is involved than a metaphysical or scientific problem.

J. T. SHOTWELL.

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REVIEWS.

The Golden Bough. By J. G. FRAZER. Part I: *The Magic Art and the Evolution of Kings* (two volumes). Part II: *Taboo and the Perils of the Soul.* Part III: *The Dying God.* Part IV: *Adonis, Attis, Osiris.* Part V: *Spirits of the Corn and of the Wild* (two volumes). London, Macmillan and Company, 1907–12.—Seven volumes: xxxii, 426; xi, 417; xv, 446; xii, 305; xix, 452; xvii, 319; xii, 371 pp.

The London *Times*, commenting upon the importance of Dr. Frazer's work, says: "The verdict of posterity will probably be that *The Golden Bough* has influenced the attitude of the human mind towards supernatural belief and symbolical rituals more profoundly than any other books published in the nineteenth century except those of Darwin and Herbert Spencer." If along with *The Golden Bough* the reviewer had grouped Tylor's *Primitive Culture* and Robertson Smith's *Religion of the Semites*—the three fitting into one common setting—the justice of this appraisal could not be disputed. The study of comparative religion has done as definite service in breaking down the barriers of old dogma and taboo among us as the discoveries of science. Between the first and third editions of *The Golden Bough* twenty-two years have elapsed, and in that time the outlook of religious thought has changed fundamentally. The readers of the third edition are not startled theologians, such as filled the pages of church periodicals with bitter protest against Dr. Frazer's earlier works, but men of more scientific temper, familiar with the main conclusions of the comparative method. Dogma has by no means yielded, but it has been obliged to learn the facts adduced by investigation in order to make them its own. Hence there is no longer a sense of sacrilege in the discovery, in all sorts of religions, of traces of the dying god and of sacrament and sacrifice in forms analogous to the Christian. Dogma is giving place to criticism, and the only question which the anthropologist need fear now is whether his method is sound and his results reliable.

This changed attitude is so largely due to Dr. Frazer's own work that it seems ungracious for the science to which he has so splendidly contributed to turn upon him in critical dissent, or turn away altogether and ignore him, just when the achievement of a life-time is appearing

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in these volumes. Yet that is what is happening. In spite of his prodigious scholarship, his unrivaled power of presentation, his penetrating analysis of data, former disciples are now leaving him and fellow-workers reject his main conclusions. There is admiration on every side for his productivity. In the last two years four huge volumes on *Totemism and Exogamy* have been followed by seven more of this third edition of *The Golden Bough*. The manual labor alone of handling these thousands of pages, each with its rich offering of references and its careful analysis, would seem in itself a sufficient task for so relatively short a time. But the work is still going on, and the author has already more volumes well on the way to the public. In one of his prefaces—which he uses so aptly for confidences with the reader—Dr. Frazer speaks of the "westering sun" warning him to finish his task; but this strenuous activity gives little hint of anything but vitality at the full. Yet admiration for a great achievement must not check frank criticism of its ultimate validity.

The criticism of Frazer's work is, unfortunately, not a question of details. It is a challenge of fundamentals, mainly directed on the one hand against the method of analysis and on the other against the synthetic plan. As for the method of assemblage of data, it is practically the same as that of Spencer and Tylor—what has sometimes, though none too justly, been termed "the English method." It is the comparative method in its extreme form, the massing of facts that bear on their face similarities or contrasts, with little regard for their environment, which however may reveal an entirely different significance. Frazer is no such sinner in this regard as was Spencer; but still he too inserts his references to primitive customs with somewhat the same ease with which one moves a card in an index catalogue. Such a method offers constant invitation to strain a point and to construe the data so as to fit the scheme; and, in spite of Dr. Frazer's vast erudition, he has already been accused of accepting the invitation. One meets already the delicate chiding by Dr. Fowler, for misappropriation of funds for Roman cults, and the divergence in treatment by Miss Harrison, Professor Farnell and others, while anthropologists enter a still franker protest concerning the handling of primitive material.

The plan of the book is therefore an element in the method itself. Indeed it is practically the whole thing, the method being so readily adaptable to any scheme. As a matter of fact, the data have been grouped around a single theme—the problem of the killing of the priest of the sacred wood of Diana in the old Arician cult, which turns out to be the problem of the dying god in nearly all societies. This theme is almost lost sight of in the long voyage of discovery, as Frazer terms

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it, which attempts to show the common characteristics of the cults and beliefs of mankind at various stages of culture, but still it remains the basis of the survey. Involved in this plan is a further problem of classification. Indeed, this is the fundamental problem of the whole work; for, in spite of the vast array of material for induction, the main categories have served rather as *a priori* laws from which to proceed than as provisional hypotheses toward which the data seems to lead. The treatment of magic shows this very clearly. Frazer separates magic from religion absolutely: magic is a crude, mistaken, primitive science; religion is the product of its futility and belongs to a second stage of culture. The one is based upon a conception of laws, the other upon the dominance of mysterious powers. Now practically every anthropologist of any standing has rejected this distinction. Hubert and Mauss pointed out its fallacies some ten years ago. Magic involves this mysterious potentiality in things, words or actions as does "religion." Dr. Frazer's "laws of thought" are merely a statement of ritual act or attitude—of how magic works, not of what it is. But if you break down this distinction, the whole Frazerian scheme of religious evolution totters. The author continues to ignore criticism upon this point. This is either dogmatism or a failure in psychological analysis. His primitives arrive at conclusions like full-grown Europeans. Undoubtedly so they do in many fields, but not here. The emotions shown in religion are no new birth of the human spirit, a second stage following a rationalist and experimental attitude. The thrill of the mysterious is there from the first, and rite and myth pass on from the earliest reactions into the higher forms.

However, it is only the outsider, the interested dilletante, who is likely to be led astray by Frazer now. The initiated witness this publication of *The Golden Bough* with a saddened admiration, realizing how magnificent might have been the achievement had the work been done on other lines.

J. T. Shotwell.

A Philosophy of Social Progress. By E. J. Urwick. London, Methuen and Company, 1912.—xii, 300 pp.

Mr. Urwick has two aims, of which the first is "to introduce students and general readers to a point of view which may increase their interest in the study of social life" (page v). The second and perhaps predominant aim is "to attack the usual conception of social science" (page v). In company with many earnest men he does not "believe that sociology is or can be a science" (page vii). Sociology is not

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and can not be a science, because each and every "separate social unit" is something more than a "joint product of nature and social life" (page 224). Each human being is a person plus, as it were. To cite Mr. Urwick's own phrases:

> Let us, to avoid difficulties, call it [the "something which neither nature nor the social process furnishes"] the real or true individual . . . which lies behind the self or the person, and is far more real than it. This we may describe negatively, by contrast with the personal self. First, he [*sic*] is not in any sense a natural or social product. He does not owe his origin or original equipment to nature; he does not owe the elaboration of his equipment to society or the social process. He must, therefore, be regarded as both supra-natural and supra-social; he is the individual as a *datum*, not of this life or world at all. Secondly, he is not in any sense a self or a self-seeker; . . . he is a God-seeker . . . . [pages 225, 226].

This view of the individual neatly explains why, as far back as page 15, Mr. Urwick claims the right, as a social philosopher, to pass beyond the range of the sociologist.

> The sociologist (rightly, as a man of science) confines his attention to four only of the five universes, omitting the spiritual as beyond his scope. The social philosopher goes hand in hand with him so far, glad to learn from him the knowable conditions of change; but passes beyond his range for the final understanding of the meaning and aim of the process [page 15].

The meaning and aim of the process is "to learn that what is of importance is not the reform, but the will that prompts it; not the improvement of social machinery, but the resolve that machinery shall be improved until all are helped by it; not the results achieved by our devices, but the effort to achieve something good for the use of our fellow-citizens." The inspiring words of this conclusion and their relations to the argument are but emphasized in the next sentence. For, Mr. Urwick says, such a "doctrine . . . is after all but a corollary from the assumption which we took as our foundation, namely, that the supreme purpose of human life, whether individual or social, is a spiritual purpose" (page 296).

In limiting the universes to five, instead of insisting upon the classical seven, and further in describing them, Mr. Urwick makes an open break with tradition. First (and least important, he explains), there is the material universe. The second universe, that of living, growing things, has added to it the third, the universe of human minds. Fourth comes the universe of social units, on whom "bear all the laws

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governing the life of a homogeneous, coöperative, organic society." Last, "though far the first in importance," is the spiritual universe.

The sociologist, excluded as he is from the fifth realm, may venture no comment on the neglect of the author to adduce proof of the hierarchy or of his other statements. None the less the philosopher, I am credibly informed, would criticize this failure to cite evidence.

F. A. DEWEY.

COLUMBIA UNIVERSITY.

Le Conflit de la morale et de la sociologie. By SIMON DEPLOIGE. Paris, Félix Alcan, 1911.—424 pp.

The author of this work is "Professeur de la Faculté de Droit à l'Université Catholique de Louvain." In it he undertakes to act as expositor and critic of the modern sociologists of France, and as advocate of the moral and social philosophy of St. Thomas Aquinas.

The sociologists, by which term M. Deploige means MM. Émile Durkheim and Levy-Bruhl, have proclaimed the existence of a total incompatibility between "la morale" and "la sociologie." By "la morale" they mean "moral philosophy," of whatever brand it may be: Kantian, utilitarian, empirical, intuitive, deductive or inductive. They criticize the method, definition and postulates of the moral philosophers and in their place propose a "science des mœurs" and, based on it, an "art moral rationel." To make clear the position of the sociologists, M. Deploige discusses at some length the sociological conception of M. Durkheim, drawing his materials largely from the latter's *Règles de la methode sociologique*, and considers the "science of morals" and the "moral art," as set forth in M. Levy-Bruhl's *La Morale et la science des mœurs* and in other works of M. Durkheim.

The sociological system of M. Durkheim our author describes as an ensemble of ideas from different thinkers, among whom the Frenchmen, Comte and Espinas, and the Germans, Wagner, Schmoller, Schaeffle, Wundt and Simmel, are the more prominent. The "social realism" of M. Durkheim has always had a more congenial home in Germany, where (according to the author) it originated, than in France, to which M. Durkheim brought it. In the appendix of the book is given the text of several letters exchanged between M. Durkheim and M. Deploige, in which M. Durkheim denies with vigor this impeachment of having set forth as French a system "made in Germany." It is a very nice question in criticism to decide whether a writer is clearly borrowing from contemporaries and predecessors, or whether he is simply expressing to his own countrymen the sense of

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a great intellectual movement, that may have its source in another country but is none the less of more than national importance. The new system is pretty sure to be a new synthesis of old materials. M. Durkheim deserves credit rather than criticism for having made such a synthesis as he has; it is undoubtedly one to be reckoned with in any consideration of modern French social theory.

Leaving this phase of the problem, M. Deploige next treats the history of the "conflict." There has been, beginning with Rousseau, a line of *a priori* moralists: Jean-Jacques, Victor Cousin, Janet and Caro have in their turn controlled social philosophy, and in their turn they have aroused reactions, voiced by Le Maistre and Comte, by Taine, Ribot, Littré and Espinas, and by the present-day sociologists of M. Durkheim's school. So the conflict is not so recent as the perusal of these latest writers would lead the uninitiated to suppose, but really dates from the intellectual movement that culminated in the French Revolution.

In the last two chapters of the book appears the author's principal thesis. Not only is the "science des mœurs" older than Durkheim and Levy-Bruhl, but is older than modern social thought. As early as the thirteenth century St. Thomas Aquinas was employing a method of social and moral philosophy quite different from that of Rousseau and his followers. It has, in the view of M. Deploige, all the virtues and none of the vices of the method of the modern sociologists.

In several important respects it differs from Rousseau's philosophy. It is inductive, after the fashion of Aristotle, studying actual societies, not an abstract conception of "man." It is based on an acceptance of the reality of the social group; not on the existence of atomic individuals. It makes morals and law express the innate tendencies of the social group rather than guard abstract "natural rights." It insists on a deduction of specific rules from general, with a flexible adaptation to varying conditions, instead of the geometrical rigidity of logic of the deductions of "natural rights." It postulates a relativity, as against an absoluteness, of moral and social laws.

Notwithstanding the fact that sociologists and Thomists are both opposing a common philosophical enemy, M. Deploige criticises the sociologists very severely for their apparent inconsistencies with each other, and for inconsistencies within their several individual works. M. Durkheim especially is taken to task for many sins of omission and of commission. One is rather surprised then, after M. Deploige's criticism of the sociologists, to notice the patronizing generosity with which he admits them into the shelter of Thomism:

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Not only cannot the powerful attack of the sociologist make any breach in the Thomist edifice . . . but this is vast and hospitable enough to shelter sociology itself. Sociology is not for Thomism an enemy, but an ally; it must be welcomed with discernment, of course; but it is not to be feared, nor misunderstood, nor met with a scowl of disapproval [page 389].

The book is an interesting attempt to prove the unimpaired validity of an outworn system of social philosophy. While many single parts of the system have a modern aspect, we can scarcely admit the implied conclusion that the modern ethics of the sociologist is only a part of Thomist philosophy. It is doubtful whether St. Thomas would agree with M. Deploige.

C. E. GEHLKE.

WESTERN RESERVE UNIVERSITY.

The New Competition. By ARTHUR J. EDDY. New York, D. Appleton and Company, 1912.—374 pp.

The competition upon which economists base their theoretical systems, the jurists their rules of law, is one thing; the competition which destroys the peace of mind of the business man and forces him to conspire with his competitors in order to gain a reasonable degree of security is a quite different thing. The competition which the economist and jurist have elevated to the rank of an ideal is the competition of the open market, where numerous buyers and numerous sellers, each conscious of the bids and offers of the others, work out a common price. The competition which the business man or farmer or laborer actually meets is often the competition of a number of bidders, in a hopelessly weak strategic position, for the custom of a single person or group of persons acting as a unit. Such competition is not only one-sided, it is also usually involved in secrecy. The employer of labor can beat down the demands of the workingman by pretending that more needy workingmen will work for less. The builder of a house can force a contractor to scale down a perfectly reasonable bid by alleging an impossibly favorable bid from a competing contractor. That competition of this order is of frequent occurrence is matter of common knowledge. That its results are evil no one would deny. It forces out of business every year multitudes of men whose services society cannot well spare. It leads to poor workmanship, if not to adulteration. In some of our western cities competition among building contractors has reached such a point that the only way a contractor can make an honest living is by scamping on his specifications.

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Competition of the secret, unfair, cut-throat variety is what Mr. Eddy designates as the "old competition." We have got rid of it in the field of railway transportation, and largely in the field of retail trade. The advantages of the published railway tariff, of the uniform price of the respectable retail store are recognized by all. Why should we not then attempt to do away with tricky and disorderly competitive methods in manufacturing, jobbing, contracting? Mr. Eddy supposes that the professional economists, as well as the legislators and the lawyers, would be opposed, on principle, to such an attempt. So far as the economists are concerned, the author is in error; practically every economist of standing would agree with Mr. Eddy as to the desirability of the reform. All that deters the economist from joining heartily in a propaganda against cut-throat competition is his doubt as to the feasibility of the plan of forcing better business methods upon business men. It is the merit of Mr. Eddy that he presents a practical plan for substituting the new competition of merit and efficiency for the old competition of force and fraud.

The essential part of Mr. Eddy's plan is the formation of "open-price associations," each embracing all the men who are engaged in a particular business. Every member of an open-price association would transmit to the secretary, for use of other members, full information as to the amount of business he is actually doing and the prices he receives for goods delivered or work performed. The whole trade would thus be far better informed than at present as to probable tendencies in the near future. The members of the trade would be in a far better position to profit immediately from a rising market or to make proper preparations for a period of depression. In contract work, such an association would place in the possession of each member the bids made by his competitors. A weak bidder would no longer be subject to the temptation of submitting an unreasonably low bid on the erroneous assumption that some one else was bidding very low. In case a contract were awarded to one who was not the lowest bidder, the association would immediately become aware of the existence of crooked dealing and could take measures to discipline the guilty member. It is impossible to give here all the details of the plan proposed by the author. It is sufficient to say that the effect of the plan would be to substitute in each field the kind of open competition which prevails in the stock exchange for the blind competition which prevails in private sales. According to Mr. Eddy, the plan has been tried and has proved successful. The reader would like to know where and in what circumstances. The author's reserve on this point is perhaps explained by the uncertainty

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whether such associations might not be subject to the prohibition of the Sherman law, unintelligently interpreted. They certainly should be free from legislative interference, if they follow consistently the policy Mr. Eddy lays down for them:

> Do nothing you are afraid to record; record everything you do, and keep your records where any public official in the performance of his duties may have easy access to them. In short, preserve so carefully all evidence regarding intentions, acts and results that there will be no room for inference or argument that anything else was intended, done or achieved [page 144].

The open-price association may greatly reduce the volume of knavery in competitive manufacture and contracting. It would hardly prove effective in an industry in which a trust is endeavoring to stifle competition. Here private agreement must give way to legal enactment. Mr. Eddy proposes to prohibit any concern from doing business at a loss (page 278). Let it be made unlawful for a company to cut prices below cost in one locality or on one particular product, while maintaining high prices in other localities or on other products. The independent producer would then have little to fear from the competition of the trust. The proposal is, of course, similar to one made many years ago by Professor Clark in his *Control of Trusts*—a book which Mr. Eddy has seen, but which he has failed to understand (see page 14). Professor Clark laid his chief emphasis upon uniformity of prices, believing that no trust would cut prices below cost, if forced to do so throughout its field. Mr. Eddy, being a practical man, does not shrink from the task of determining directly what the cost is and fixing prices accordingly.

Every practical man has his Utopian streak, and Mr. Eddy is no exception to this rule. With free and fair competition, the capable will survive and the incapable will go down. This hard law is not to Mr. Eddy's liking. Three men make plows, one at a cost of $20, a second at a cost of $19, a third at a cost of $18. If the fairest and freest competition prevails, and the third man can produce all the plows that are needed, the other two are destined to extinction. Mr. Eddy urges that it is to the interest of the community to maintain the price at $21, so that all three may survive (page 240). So in a vanishing industry, like a manufacture based upon declining supplies of natural gas, prices should be maintained at a level which will permit the individuals engaged in it to escape with a minimum loss. And this implies the fixing of prices by combination. Society is to insure men against loss of their capital. The economist, hard-hearted as Mr.

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Eddy supposes him to be, views with regret the losses due to business mistakes. The possibility of such losses appears, however, to be the only practical check upon foolish investments—waste of the limited productive power of society.

The author, not content with an attempt to solve the problems of competition and monopoly, offers a solution of the labor problem also. All that it is necessary to say of this solution is that it involves the destruction of the trade union proper, and the substitution for it of what amounts to a shop association of all employees; that it involves the abandonment of the policy of fixing uniform wages throughout the trade and the adoption of varying rates, based upon the peculiar circumstances of each establishment.

Mr. Eddy is a lawyer, and, though he makes an honest endeavor to extricate his economic thinking from the tangle of legal prejudice (*cf.* pages 161 *et seq.*), in the end the task proves too difficult. From a legal point of view, exemption of trade unions and farmers' associations from the penalties of anti-trust laws is class legislation, pure and simple. So it appears to our author (pages 305 *et seq.*). "At present the country is in the highly anomalous and highly unstable condition of being half free, half slave. Laborers are entirely free to combine; farmers are half free, half slave; manufacturers, merchants and dealers are all slave" (page 328). It seems never to have occurred to Mr. Eddy that "all slave" manufacturers are more than a match, in bargaining, for "entirely free" workingmen; and that there is accordingly no ground for his assumption that we shall be forced to grant to the manufacturers full right to combine.

Mr. Eddy's book is not a scientific treatise, and its scientific shortcomings are therefore to be condoned. It is an effective appeal for a reform in competitive methods—a reform which is probably practicable, in a measure, and which would go far toward curing many social ills. The book contains numerous interesting facts, some of which are new. At its best, it is entertainingly written. Epigrams like the following abound: "Truth is a labor saving device"; "Competition is war and war is hell." At its worst, it produces such paragraphs as the following: "Why should man compete so blindly, so mercilessly? Why should we seek to make it a law of the industrial world that only the young, the strong, the vigorous, shall find employment?" But even here we see a sign of secular progress. In an earlier age such stuff as this would have been put into blank verse.

ALVIN S. JOHNSON.

CORNELL UNIVERSITY.

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Pay-Day. By C. H. HENDERSON. New York, Houghton, Mifflin Company, 1911.—vi, 339 pp.

Mr. Henderson's volume is a vigorous arraignment of the present "Industry-for-Profit," and an earnest appeal for the substitution of "Industry-for-Use." In a series of chapters, embracing about two-thirds of the volume, he charges that Industry-for-Profit undervalues persons and overvalues things and gain through things. To this Industry-for-Profit he attempts to trace such social evils as child labor, woman labor, long working days, unemployment, industrial accidents, adulterated products, drunkenness, prostitution, market-seeking wars and poverty. In the latter part of the book he states his remedy for these evils, *viz.* the elimination of profit and the establishment of vocational education attuned to his substitute system of Industry-for-Use.

A scattered third of the volume will be stimulating reading for students of the philosophy of education, and particularly for those who are interested in industrial education. In this part of the volume (chapters i, ii, iii, xiv, xv, xvi, xvii, xxiv, xxx and xxxi) Mr. Henderson states his ideal of education and criticizes modern industrial education. He claims that at present industrial education tends to cleave society more clearly and more unalterably into industrial and non-industrial classes and to train the industrial classes to be still more profitable exploitative material for the non-industrial profit-takers. In a word, Mr. Henderson has presented in *Pay-Day* his case for socialism with emphasis upon its educational ideals.

As is common in socialistic literature, this volume is most effective in its chapters criticizing present society and is weakest on the constructive side. It is particularly unconvincing in its treatment of interest and money (chapter xxv) and in its somewhat loosely thought-out program for "repentant profit-takers" and awakened workingmen who may in their own lives desire to anticipate the millennium (chapters xxvii and xxviii).

Mr. Henderson clothes his thought in strong, clear and simple English, which again and again rises into the upper air of eloquence and poetry. It will not be easy to find a more effective statement of the futility of attempts to right the world's wrongs by palliative charity and minor reforms than Mr. Henderson has given in his poetic parable of the hungry waters (pages 326 to 329).

The whole volume may be fitly characterized as an educator's impassioned oration on social wrong and its remedy.

WALTER E. CLARK.

COLLEGE OF THE CITY OF NEW YORK.

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Saleswomen in Mercantile Stores. By ELIZABETH B. BUTLER. New York, Charities Publication Committee, 1912.—xv, 217 pp.

Fatigue and Efficiency. By JOSEPHINE GOLDMARK. New York, Charities Publication Committee, 1912.—xiii, 302, 591 pp.

The making of labor laws to protect women workers has been a slow and spasmodic process. The zeal of reformers and the self-interest of employers have been pitted against each other, and the public has, for the most part, looked on with indifference. The result is that little has been accomplished. More than thirty American states, it is true, have passed laws placing some limit on the working hours of women, but enforcement lags behind legislation, and in too many statutes exceptions give legal sanction to overwork. Only three states, Massachusetts, Indiana and Nebraska, prohibit night working by setting a legal closing hour.

The outlook would be discouraging if progress were to depend entirely upon the results of the struggle between unintelligent zeal and unenlightened self-interest. From scientific investigation, however, new knowledge is coming which changes the situation. Field work, systematically planned and carefully conducted, is establishing the facts, and laboratory investigations are bringing out their significance. Presentation of the facts creates a more durable public sentiment than can be aroused by rhetorical appeals, and scientific interpretation of the facts gives the data that are needed for intelligent legislation and efficient administration.

Miss Butler's book contains the results of an investigation made in Baltimore for the Consumers' League of Maryland with the coöperation of the Russell Sage Foundation. Its immediate purpose was to secure information to enable the League to prepare a "white list" of stores. The book has a larger use, however, as a model for similar inquiries in other communities.

Miss Butler lays especial stress upon the problem of personal efficiency, as involving "not only the selection of new employees but the conservation of the health and interest of old employees." She shows the intimate connection existing between the efficiency of the workers and work conditions, such as the structural arrangement of the stores, hours of employment, seasons of labor and range of wages.

In the course of her investigation she found stores housed in buildings not planned originally for their needs or their growth; too narrow a space for workers behind the counters, and not enough seats for the

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girls to use between sales; entrances admitting cold draughts every time a customer opens a door; show-windows cutting off air and light from the workers, and a disastrous mixture of natural and artificial light. On the other hand in some few stores every one of these elements of comfort has received consideration, and the establishment of satisfactory working conditions has been shown to be practicable.

The average working hours are found to be 56.9 in a week. The opening of the Christmas season, however, brings with it in 30 stores a working week of more than 60 hours; in 21 stores a week of more than 70 hours; and in three stores an 80-hour week. Following the Christmas rush comes the slack season, when a number of workers must face a period of idleness. Furthermore, a casual laying-off of girls from time to time during the year illustrates the lack of careful planning on the part of the store management and failure to appreciate the importance of developing the personal efficiency of employees.

"Baltimore is not yet consciously a city of workingwomen," writes Miss Butler. "The concession that some women must work has been made, not to women as individuals, but to women in their family relations." Miss Butler finds this traditional attitude reflected in the wage scales, and she believes it to be partly responsible for inadequate payment. She reports that the wages of 81 per cent of Baltimore's saleswomen are less than the minimum cost of living, even if the estimate of that cost be as low as $6.70 a week. All these conditions—unwholesome physical surroundings, long hours, low wages and irregular work—militate against efficiency. A book like this is a contribution toward the solution of the problems not only of Baltimore but of other similar communities.

Miss Goldmark's volume (which is also a Russell Sage Foundation publication) shows the precise relation between long hours of work and personal efficiency. From tests made in the laboratory we learn that fatigue is a poison, that a tired person is a poisoned person—poisoned in muscle, brain, heart and blood—and that rest alone can repair the ravages of fatigue. Furthermore, if rest be too long deferred, exhaustion will follow with serious results. Health and efficiency can be maintained only if activity be balanced by repose. Miss Goldmark shows the application of these facts to modern industrial conditions and pleads for a physiological rather than a purely economic basis for labor laws. Her illuminating illustrations drawn from many different types of industry point the way toward the detailed studies that will be necessary to establish scientific standards of healthfulness in diverse occupations.

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This book had already achieved results before it was put between covers. In 1907, the United States Supreme Court was for the first time called upon to determine the constitutionality of a women's labor law. On that occasion Miss Goldmark assisted Mr. Louis D. Brandeis, her brother-in-law, in the preparation of his brief, in support of the law. The data presented in the volume under review were effectively employed in his argument and helped to secure a favorable decision—a decision that gave the highest legal sanction to the effort to extend adequate protection to women workers in every state in the country.

MARY VAN KLEECK.

NEW YORK CITY.

Outlines of Political Economy. By S. J. CHAPMAN. London, Longmans, Green and Company, 1911.—xvi, 413 pp.

Economics, Descriptive and Theoretical. By MARGARET MCKILLOP and MABEL ATKINSON. London, Allman and Son, n. d.—xiii, 216 pp.

The appearance of these two volumes indicates an increased interest on the part of English teachers of economics in the matter of elementary text-books. Although this field has for some years been assiduously cultivated by American writers, it has been strangely neglected in England. Today however, the widespread interest in social-economic problems in England and the consequent increase in demand for economic instruction have finally made imperative the preparation of texts, written from the English point of view, for beginners and for the general reader.

Professor Chapman's book, while intended for beginners, is really an advanced treatise condensed; and to condense highly abstract economic theorizing is hardly the best way to make it intelligible. Most beginners in the study of economics want their theory in homœopathic doses, and even then they demand that it be made palatable by a generous sugar-coating of fact and illustration. But Professor Chapman seems to be a pedagogical allopath. He neglects the sugar-coating and he makes his doses strong. From cover to cover there is little descriptive material, while the reasoning is to a high degree abstract and involved. Without very thorough class-room discussion, the average beginner would get very little out of this book.

This does not imply that the system developed in the book is open to serious criticism. Professor Chapman follows Marshall in all

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essential particulars, as far as doctrine is concerned. The viewpoint, too, is that of the broadminded social philosopher who regards wealth production as a means rather than as an end.

The method of treatment is the familiar one. The text as a whole is divided into seven books, dealing respectively with scope and method, consumption, production, exchange, money and the mechanism of exchange, distribution, public economics and public finance. To public finance, however, but twenty-six pages are allotted, and the treatment is decidedly fragmentary. It is difficult to see why so many writers insist upon including public finance in an elementary economic text-book. Professor Chapman certainly might better have used the space devoted to this subject for a further elucidation of some of the involved and inadequately explained principles of economics proper.

Considering the purpose of the book, its style can hardly be called felicitous. It lacks life. Instead of receiving an impression of the significance of a proposition from the way in which it is treated, the reader gets simply a chilly "it is important to notice," *etc.* Moreover, the average reader resents the patronizing, "I will now show" *etc.* The personal pronoun "I" has no place in a scientific treatise, except perhaps in foot-notes. It can, however, be found on almost every page of this book. On the whole, therefore, Professor Chapman's *Outlines of Political Economy*, as a beginner's text book, is hopelessly impracticable.

The second book under review is more superficial and displays little of the analytical acumen that characterizes Professor Chapman's work. It is nevertheless a more satisfactory book for the beginner. In the first place, as the title indicates, much space is given to description, with the idea of helping the student at the outset *sich zu orientieren*. There are 182 pages of descriptive and 215 pages of theoretical matter. The descriptive matter deals with civilized life as contrasted with primitive life, with economic history, modern economic methods, household budgets, the different "rates," the national debt, taxation, the organization of Parliament and, finally, the government of the colonies. Some of these topics may seem but remotely connected with elementary economics, but they are handled in such a way as to enable the reader to see that they touch economic interests vitally. Then, in the second place, the theoretical part of the book is well adapted to the needs of the average beginner. It starts with the study of money and exchange, avoids involved analysis, treats all the shares in distribution as so many prices and includes much descriptive material that supplements and exemplifies the theory.

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In this book also the doctrine expounded is virtually that of Marshall, but of a very much simplified Marshall. There are only three sections or divisions, namely, exchange, production and consumption. Under exchange we find discussed money, banking, and the determination of prices. Under production the authors treat not only production and distribution but also certain practical problems like trade-unionism, unemployment, free trade and protection. Under consumption standards of living *etc.* are dealt with. All these matters are clearly presented, and they are made interesting. One noticeable characteristic of this book, written by two women, is the frequent use of examples of especial interest to young women. This is a hopeful sign; for a criticism that is often directed against women students and women teachers, and not without reason, is that they have too much respect for the precedents established by men.

EUGENE E. AGGER.

Common Land and Inclosure. By E. C. K. GONNER. London, Macmillan and Company, 1912.—xxx, 461 pp.

Professor Gonner's volume on *Common Land and Inclosure* gives the best modern presentation of the old arguments in favor of the abandonment of the common field. These arguments were put forward with great ability and effect in the eighteenth century and in the first half of the nineteenth; but Professor Gonner traces the movement much farther back than the beginning of the factory era and the advent of the eighteenth-century political economist. It was a cause of complaint even in the fifteenth century that the land was taken from the husbandmen and given over to sheep, thereby depopulating the countryside. The author traces with great care the progress of inclosure in the different sections of the country, and gives excellent tables and maps showing amounts of enclosed land in each county. He also gives figures to show that the food-supply of the country was increased by inclosure, that the common field was wasteful and that common pasturage was incompatible with improvement in the breeding of cattle and sheep. He brings out forcibly every disadvantage of the older and more primitive system; and, in his effort to prove that the English people lost nothing worth having by inclosure, he tries to show that pasturage rights were of little value to the poor, because frequently the rich men crowded the pasture with their own cattle and left little room for the poor man's cow.

From the point of view of the amount of food produced, both in the

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form of grain and of meat, a good case is made for inclosure. It is impossible to conceive that the old primitive forms of agriculture, associated with the possession of strips in common fields, could have survived the increase of population and the growing needs of the nation. Whether or not we can take quite literally the assertions of friends of the system of inclosure, men who were endeavoring to promote bills in Parliament for inclosing land, it is undoubtedly true that a casual glance over the face of the country after the inclosure of the greatest part of the land would have disclosed great advances both in agriculture and in the rearing of stock. "Land that formerly kept a few half-starved sheep is now yielding an abundance of both grass and corn" reads a report of 1815 on the condition of Warwickshire; and the author gives numerous tables to show the increase in the number of cattle, dairy cows and sheep and of the acres under barley, oats and wheat, in counties that had been largely affected by inclosure.

It is not difficult for Professor Gonner to make out his case that there was a distinct improvement in agriculture, and in sheep and cattle-breeding during the years when inclosure was in progress. It can also be accepted that this improvement was largely due to inclosure and could not have taken place under the old system of the common field and common pasturage. A different question is raised, however, when the author turns to the charges made against inclosure by modern writers, especially Dr. Slater, Dr. Hasbach and Mr. and Mrs. Hammond, on the condition of the people of England. There his case is decidedly weak. He makes no attempt to disprove the assertions made by Mr. and Mrs. Hammond in the *Village Labore*r that inclosure acts were obtained by individuals who had influence with members of Parliament, that they were frequently railroaded through both Houses with very little regard for the rights of the poor, and often greatly against the will of a large number of the people affected by them. It is not convincing to be told that the bitter complaints of inclosure which ring through English history from the fourteenth century onward were unfounded, simply on the basis of some statistics which appear to prove that there was no wholesale depopulation as a result of inclosure. Nor are the tables of poor rates paid in the various parishes a complete index of the prosperity or the poverty of the common people. It is possible that the rights enjoyed by the inhabitants of the villages before inclosure were, as Professor Gonner states, not strictly legal but enjoyed only by custom. Whether by law or by custom, the poor had enjoyed some share in the profits of the common and the open fields, and this they lost by inclosure. As

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regards the small owners, whose rights were beyond cavil, the author incidentally admits that the costs of inclosure—of obtaining the act and afterwards of hedging and ditching the portions allotted to them—were heavier than they could bear. The result was, as Mr. and Mrs. Hammond point out, that they were obliged to sell and that their portions were engrossed by the large landowners. The poor whose rights were dubitable were therefore only a little worse off than the men who had had undoubted place in the economy of the common field.

Professor Gonner accepts without criticism the evidence that was repeatedly offered to committees of the House of Commons by partisans of inclosure bills, that the ownership of a few pigs or geese had the effect of making the man, who had the ill-luck to be subjected to the temptation offered by a neighboring common, idle and inclined to attend to his own poor possessions instead of working steadily for the large farmer who needed his services. This evidence would be more convincing if it had been offered by disinterested persons, and if it had not been stretched to cover the cases of children of seven or eight, who were equally condemned as idle if they were employed in nothing more laborious than herding the geese or the sheep, when the hospitable cotton factory was beginning to summon those little workers within its walls. It is not enough to prove that the food supplies of England were increased, even though this increase was necessary for the growing population. It is not enough to prove that the country was not depopulated as a result of inclosure. Much more proof than is offered by Professor Gonner will be needed before the heavy indictment of inclosure as a dominant cause of the present low level of the English agricultural laborer, with his miserable housing, his poor wages, and his general condition of servitude, can be dismissed as an unfounded calumny on the land policy of the governing classes of the seventeenth, eighteenth and nineteenth centuries.

A. G. PORRITT.

HARTFORD, CONNECTICUT.

The Cambridge Medieval History. Planned by J. B. BURY and edited by H. M. GWATKIN and J. P. WHITNEY. Volume I: *The Christian Roman Empire and the Foundation of the Teutonic Kingdoms.* New York, The Macmillan Company, 1911.—xxiii, 754 pp., with maps.

The *Cambridge Medieval History* follows the same general plan as that which Lord Acton laid down for the *Modern History*. One wonders why. The defects of that plan have been pointed out by reviewers

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so insistently and so frequently, that one might have expected at least a modification in structure from the new architect. There is the same absence of adequate and definite references, of any mechanism for either verification or elaboration of statements in the text, and the same blanket bibliographies, almost unannotated and but slightly edited. These defects of the earlier history were sufficiently serious matters to call for some kind of remedy; instead, however, the new history pursues the even tenor of the easier way. Indeed the apparatus is inferior to some of the volumes in the *Modern History*. Do editors in such cases really agree with publishers that a book can be made popular by leaving out foot-notes? No such device can make these very special monographs, which quote freely from the Latin and the Greek, interesting for the general reader; and in that case it is well to consider the needs of the scholar. Even the bibliographies which are given are, with two or three exceptions, highly individualistic, mirroring the author's method of work, rather than systematic and objective. Of one or two of these, one would prefer not to speak. That on the "Organization of the Church," for instance, is quite beyond words: Maassen's *Quellen des canonischen Rechts* is "indispensable," and the only work in English referred to is Hatch's Bampton lectures!

The present volume covers approximately the two hundred years from Constantine to Justinian—the period in which heathenism gives place to Christianity, Rome to Constantinople and Roman society largely to barbarism. The first six chapters treat of Christianity and the Empire, beginning with a chapter on "Constantine and his City" by Professor Gwatkin. There is a flavor of the church historian in Professor Gwatkin's work. He evidently regards as pure fable the pagan accounts of Constantine's conversion. But since they were easily woven into the legends which form the basis for the *Acta Silvestri* and hence pass into the "donation," it would be well to consider them. He accepts the traditional "Edict of Milan." Upon the whole, though, this treatment of Constantine is consistent and intelligible, and that is perhaps all that can be said for any biography of a man who was such a puzzle to his own contemporaries—or rather whom all his contemporaries thought they understood but whom each understood differently. Dr. J. S. Reid's account, in chapter ii, of the administrative reforms of Diocletian and Constantine is clear, but would have gained had there been given a clearer setting for these reforms, a clearer glimpse of the disappearing municipal life and the growing troubles over taxes. These are lugged in as an afterthought, as the purely political historian is bound to do in such cases. The

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absence of any bibliography for this chapter (for in spite of a heading to the contrary, such is the case) is a serious defect. The "New Empire" was no longer the old agglomeration of city-states which had been federated to form the Roman Empire of Augustus. Only the shell was left for the barbarians to break, and it was oriental. This fact should stand out in bold relief in such a survey. It was but natural that Mr. C. H. Turner should treat of church organization (chapter vi) mainly through conciliar material, in view of his researches in that field, although a background of the primitive religious ideas is supplied as well. Principal T. M. Lindsay describes, in chapter iv, the mystery cults, the victory of Christianity and the struggles with paganism. This is too large a field for more than a superficial survey in so few pages, and that may be why it seems to lack that intimate touch which makes this phase of religious development seem so modern in the pages of men like Cumont. Two chapters by Mr. Norman Baynes narrate purely political events: the struggle with Persia and the transition to the new age following the last vigorous action of the empire under Valentinian and Theodosius the Great.

With the seventh chapter we pass to the Teutons. Dr. Martin Bangs begins with prehistoric times, describes their migrations and their conquests westward and southward till they were brought to a stand on the Rhine and Danube by the Roman legions, also their four centuries of struggle to break through the Roman frontier before the battle of Hadrianople settled them inside the empire. Dr. M. Manitius, in chapter ix, carries the story through the administrations of Theodosius and Stilicho to the great collapse—the passing of the Rhine, the overrunning of Gaul and Spain, the Roman mutiny at Pavia and the sack of Rome by Alaric. After these general chapters come the more special histories. In chapter x, Dr. Ludwig Schmidt begins with the settlement of the Visigoths in Gaul, traces the growth and culmination of their kingdom of Toulouse and ends with their expulsion from Aquitaine by Clovis. In the same chapter a competent writer, Professor Christian Pfister, of the Sorbonne, treats of the Franks before Clovis. In chapter xi, Dr. Schmidt tells the little that is known of the Suevi and Alani in Spain and describes the history and institutions of the Vandals in Africa. Dr. Schmidt also gives us the account of the Huns and Attila, as the conclusion to chapter xii, in which Dr. T. Peisker describes the Asiatic background for the invasion of these barbarians. Professor F. J. Haverfield, in chapter xiii, describes the conquest and administration of Britain by the Romans. In the same chapter, Mr. F. G. M. Beck deals with the English in their continental

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home and tells the story of their settlement in Britain. Mr. Ernest Barker records, in chapter xiv, the last struggles of the Western Empire; and M. Maurice Dumoulin, in chapter xv, treats of the kingdom of Italy under Odovacer and Theodoric. The story of the eastern provinces from Arcadius to Anastasius is narrated, in chapter xvi, by Mr. E. W. Brooks.

The last five chapters are of quite a different type: in place of summary narratives of political events we have studies of conditions and movements. Miss Alice Gardner traces, in chapter xvii, the history of religious disunion in the East and the various heretical sects that developed therefrom. The growth of monasticism is described by Dom E. C. Butler, in chapter xviii, while in the following chapter Professor Vinogradoff surveys the whole field of social and economic conditions in the declining Empire and shows the part played by these conditions in the final disintegration. In chapter xx Rev. H. F. Stewart describes the heathen and Christian literature of the time and the various lines of thought which seem to converge in Augustine, and discusses the social activities of the church in the application of the new religion to the affairs of daily life. The book closes with a chapter on the beginnings and development of early Christian art, by Mr. W. R. Lethaby.

E. F. HUMPHREY.

COLUMBIA UNIVERSITY.

The Influence of Wealth in Imperial Rome. By WILLIAM STEARNS DAVIS. New York, The Macmillan Company, 1910.—xi, 340 pp.

"This book," as its author tells us, "attempts to consider various phases in the economic and social life of Ancient Rome. . . . The purpose is to consider the influence of money and of the commercial spirit throughout the period of Roman greatness. . . . Much of the book naturally is taken up with a discussion of the prosperous period of the Early Empire; yet the 'Influence of Wealth' began its dominance far back under the Republic, and many references must be made to this period." The author further defines the time-limits of his essay: "By the Roman Age is meant the last century of the Republic and the first two centuries of the Empire."

Accordingly, after a modernized sketch of a business panic in the Rome of 33 A. D., the author presents, in chapter ii, a picture of "Political Corruption and High Finance, especially under the Later Republic," with copious illustrations of bribery in public life, the

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maladministration of venal provincial governors and the extortions of tax-gatherers and usurers. As a result of the concentration of the capital of the world at Rome and of the inordinate estimate placed on wealth in consequence, there was to be found, under the early Cæsars, "a cult of Mammon which has no counterpart in history" (page 36). Chapter iii deals with the prosperity of the Early Empire and the results of the *pax Romana*—the building up of great fortunes, the development of a banking and credit system and of commerce foreign and domestic, the improvement and exploitation of the means of communication by land and by water, the growth of industry and trade. Having dealt with "the men of the Empire as getters," the next four chapters present them as "spenders." After pointing out that the almost unavoidable corollary of the huge Roman fortunes was the accumulation of great debts and the lavish and reckless expenditures of money on city houses and country villas, on gourmandizing, costly funerals and other extravagances, and to buy off the private prosecutor (*delator*), the author turns, in chapter v, to the servants of the favored classes of the Empire and discusses, in abundant detail, the economic and social conditions of the lower classes in town and country—the slaves, freedman and plebeians. Attention is then called to the ancient idea of beneficence and the lavish benefactions of the rich (games, sportula and donatives) and to certain modern phases of the culture and society of the Roman age (chapter vi). In chapter vii the author discusses the effects of wealth on home-life (divorce, childlessness) and concludes that "it is plain the people of the Empire were not simply very wicked; they were on the high-road to moral degeneracy, economic decline and almost deliberate race-suicide" (page 296). The book closes with "Some Reasons Why the Roman Empire Fell," among the most important being the constant decline in population and the Germanization of the army and of the Empire. Though "the economic evil was at the bottom" (page 330), the suggestion is hazarded that:

> the Empire fell because the ideals animating its builders and its continuers were low and unworthy. . . . No state ever excluded the ideal from its national and social life so strictly as did Rome. It taught its prosaic commercialism to all its provinces . . . Its citizens served Mammon in the place of God with more than usual consistency. The power they worshipped carried them a certain way—then delivered them over to their own rottenness, and to the resistless enemy [page 335].

This rather detailed presentation of the contents of Mr. Davis's book

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will convey some idea of the comprehensive field covered. The writer's style and the modernizing of the topics discussed make it all the more attractive to the general reader, for whom the book is intended. All the more reason, therefore, that attention should be called to some of its shortcomings.

First of all, as the title and the introductory chapter indicate, the writer is primarily, almost exclusively, concerned with the influence of wealth and its effects on Roman society and government (*cf.* especially pages 6–11). The book is therefore frankly one-sided, and the picture is overdrawn. Mr. Davis certainly succeeds "in making plain that within the Roman world, amid which Cicero thundered his eloquence, Cæsar led his legions, and Nero indulged his passions, there was another world, less voluptuous and glittering, less famous in history, but no less real and important to the men of the day—the realm of the great god Lucre" (preface, page vi). But is the picture fair and true to the life of the vast mass of "the men of the Empire?" Is this generalization warranted, especially in view of the local differences (referred to by the author himself on page 37), and of the paucity of material for writing a true history of the people of the Roman Empire, whose interests and life were so much more circumscribed than our own? The picture is effectively drawn, but is the interpretation of the facts true and just?

The title is misleading, especially when the contents of the book itself are considered. Rome is not the Roman Empire, least of all during the first two centuries of the Christian era, and assumptions that Roman and Italian conditions prevailed throughout the Empire are unsafe and in the highest degree misleading, inasmuch as Rome and Italy during this "Roman Age" occupied a privileged and artificial position in the Roman imperial scheme.

The hop-skip-and-jump method, from the chronological point of view (employed for example, in the first two paragraphs of chapter ii) and the disregard of or wrong emphasis placed on geographic and historic conditions (for example, in the sixth paragraph of chapter v) are disastrous and destroy perspective and proportion. A composite photograph covering so long a period, with no clear distinction between Rome and Roman Empire, and between the period of the Republic and of the Empire, and interpreting the "Roman Age" from a single viewpoint, can not but be misleading to the general reader. The dangers of generalization and of "foreshortening" are obvious.

Considering the unwieldiness of city-state machinery for the rule and administration of great territorial areas, the difficult problems of finance

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and of taxation, not to mention those of race, religion and language, which the Romans had to solve, with little experience to guide them and no knowledge of the economic laws which the modern age has formulated; bearing in mind also the necessity of settling, exploiting and defending the vast frontier areas of the Empire; and remembering finally the well-known attitude of the literary classes towards the masses throughout this "Roman Age" of the Empire—the thesis of the book, especially as amplified in the last chapter, seems to be superficial and inadequate, not to say unjust and unfair. It certainly does not help us to understand and to appreciate the tremendous odds against which so many of the Roman emperors and their efficient servants were struggling manfully, if not wisely.

Mr. Davis's book fairly teems with excellent material, but upon the general reader it will inevitably leave an impression largely erroneous. Properly "checked up," the book will be found of great value.

R. F. Scholz.
University of California.

Anson Burlingame and the First Chinese Mission to Foreign Powers. By Frederick Wells Williams. New York, Charles Scribner's Sons, 1912.—xii, 370 pp.

The Passing of the Manchus. By Percy Horace Kent. New York, Longmans, Green and Company, 1912.—xi, 404 pp.

Professor Williams's book is a worthy volume, on a worthy subject, by one highly competent for the task. When we consider the epochal character of Burlingame's mission, it may seem strange that it has not sooner found a historian. The tardy recognition of its importance may, no doubt, be ascribed to the circumstance that the policy which Burlingame advocated and labored to develop was in advance of his time. It ran counter to the prepossessions of the East as well as to those of the West, and to the attitude which they respectively maintained toward each other. Burlingame believed, as Professor Williams observes, in the application to the business of diplomacy of the commandment: "Thou shalt love thy neighbor as thyself." While it may not always be easy to apply this rule, if your neighbor does not reciprocate it, there can be little doubt that in Burlingame's day the relations of the East and the West were seldom conceived to fall within its fraternal range. Moreover, the stipulations of the treaty which he made with the United States, and by association with which his name is perhaps chiefly remembered in this country, soon ceased to repre-

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sent the state of the actual relations between the United States and China, especially with regard to the question of change of home and allegiance. But these things need not blind us to the fact that he pursued an ideal which in later times governments have desired to profess and have recognized as possessing a practical value. Burlingame's diplomatic career is now clearly set before us, in its more enduring as well as its temporary aspects. There are five appendices, containing important documents, and these are followed by a bibliography and a general index.

Mr. Kent treats of the latest political developments in China. In so doing he passes rapidly in review the antecedents of the recent revolution. He speaks of the mission whose history Professor Williams narrates as having "at its head, Mr. Burlingame, the United States minister." Burlingame, when entering the service of China, resigned his office as American minister. His mission is not, however, a subject of special interest in connection with the events which Mr. Kent narrates, except as constituting an important step towards the establishment of more intimate relations between China and the western world. Mr. Kent's volume has indeed the virtues and the defects of books of its class. As he remarks in his preface, much time probably must elapse before a complete account can be written of the developments in modern China which have resulted in the present situation. Meanwhile, the world desires such information as can from time to time be furnished. The author wisely refrains from attempting to play the rôle of a prophet, but he points out the elements that justify a hopeful view of the future. He publishes in an appendix a translation of the provisional constitution of the Republic of China. He is disposed to think that the bankers who constitute the six-nations group went too far in requiring the administration of the salt gabelle to be placed under foreign supervision—a demand which they have since abandoned. He gives an extended review of the various loan negotiations.

JOHN BASSETT MOORE.

The Wisconsin Idea. By CHARLES MCCARTHY. New York, The Macmillan Company, 1912.—xvi, 323 pp.

Wisconsin: An Experiment in Democracy. By FREDERIC C. HOWE. New York, Charles Scribner's Sons, 1912.—xii, 202 pp.

Des Moines has a "plan"; Oregon a "system"; and now Wisconsin, not to be outdone in originative genius, appears to have evolved an "idea." While, according to Mr. McCarthy, no one categorical

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explanation of the Idea can be given, it appears to include: "the development of the efficiency of the individual and the safeguarding of his opportunity, the jealous guarding of the governmental machinery from the invasion of the corrupting force of concentrated wealth, the shackling of monopoly, and the regulating of contract conditions by special administrative agencies of the people."

Mr. McCarthy gives the Idea a concrete form by describing some of the progressive legislation which began with the Direct Primary Act of 1903 and which covers such various matters as corrupt practices, workmen's compensation, the regulation of railroads and public utilities, state insurance and agricultural education. This comprehensive program, executed with unusual care and practical consideration, has carried the state a long way towards industrial democracy. Such a record of achievement, crowded into a single decade, must appear impressive even to those who suspect that the Idea is not altogether a Wisconsin monopoly. But there is something almost comic in the naïve complacency with which Mr. McCarthy writes of it. He is a panegyrist; such phrases as "that great student" and "brilliant newspaper man and author" recall the flamboyant eulogies which are delivered in Congress when our statesmen die. Not a few of the measures which he praises—the presidential preference primary and the second-choice ballot, for instance—had not yet been tested in practice when he wrote; the direct legislation amendments will not be submitted to the people till 1914; and as for the Massachusetts ballot and the Oregon system of electing United States senators, the first will precipitate "a fierce struggle" in 1913 and the second "undoubtedly will be considered later." Evidently Wisconsin, in the language of Chesterton, is glowing with the memory of to-morrow afternoon.

Why did Wisconsin assert this preëminence over all the other states? Because, Mr. McCarthy asserts with curious emphasis and reiteration, it is "fundamentally a German state", "the great German state of the nation"; because "German standards and Teutonic blood . . . are so prevalent"; because "the cautious, careful German and Norwegian have refused to be domineered over by every long-haired reformer who prances into the arena"; and because "the German state" has a "German university." Of course this is an hallucination. The only evidence adduced is a page from the college directory conveniently chosen under the letter K. But later on, to show the practical nature of political instruction in this German university, some pages from the announcement of courses are given; and the names of nine of the ten instructors quite obviously originated in the United Kingdom of Great

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Britain and Ireland. And who were actually the progenitors of the Wisconsin Idea? How many of them had more German blood than the New-Englander John Bascom or the Scotch-Irish Huguenot Robert M. LaFollette? And are we to suppose that Mr. McCarthy's own forbears came from Pumpernickel? By way of further criticism, it must be said that evidence of haste and carelessness abounds. There are occasional lapses in grammar; there are strange allusions to Bagehot's "History" of the English Constitution and "Judge" Dicey's "Law and Opinion"; and there are numerous and extended quotations from books and statutes and court decisions, some of them running to six or eight pages of small type.

But, with all these defects, the book has conspicuous merits. In some ways it should rank as the most suggestive contribution which has recently been made to the literature on state government. Nowhere has the inner meaning of the new radical movement been stated at once so simply and so cogently. Those who read the first chapter, which discusses "The Reason for It," and the last chapter, which treats of "The Law and Economic Progress," will see that the author has come fairly close to an understanding of the fundamental problems of our politics. Some may take alarm at his references to "the tarnished grandeur of the Constitution" and "the break-down of common justice." But, believing firmly in representative government, he not unnaturally regards the abolition of frivolous constitutional restrictions and the policy-determining functions of the courts as necessary to the rehabilitation of the legislatures. Power and responsibility must be restored, or else the public will continue to sigh with relief when each session ends and to thank heaven that the courts can be relied on to protect the people's interests against the representatives of the people. Mr. McCarthy, evidently preferring cabinet government, would require administrative commissions to appear before the legislature to answer questions. He makes a number of other proposals, intended to secure honesty and efficiency in the public service; for example, that the legislature should meet immediately after the election, organize committees, and then adjourn for a year so as to ensure due care in the preparation of bills. The official position which Mr. McCarthy has held for the past five or six years has given him unusual opportunities to observe the defects of existing practices and should entitle his proposals to serious consideration.

Dr. Howe's volume traverses the same ground of proposed legislation, but with a more orderly arrangement and with an attention to form and style which makes it very agreeable reading. His enthusiasm

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is equally boundless. He finds that Wisconsin has become "a vital political agency", "the most efficient commonwealth in the Union"; that "scientific thoroughness characterizes its policies as in no other place in America"; that it "has bred a spirit of service that is unique"; that it "has carried democracy farther than any state save Oregon" *etc.* But he attributes these phenomena, not to German traditions, but to the leadership assumed by "LaFollette, the Builder," and particularly to LaFollette's mandatory state-wide Direct Primary Act, which brought political freedom in its train and produced a psychological change "not in Wisconsin alone, but in the nation as well." At the same time full justice is done to the remarkable rôle which the state university has played. Not the least instructive part of the book are the four chapters which show, not only how education has been brought to the masses and science applied to agriculture, but also how the university has been a center of social thought and of political inspiration. Dr. Howe is a radical thinker. As is natural with one who served under Tom L. Johnson in Cleveland, he believes that public ownership of utilities is essential to the carrying-out of a social program. He also believes that our rigid written constitutions have increased the apathy of the people and thus have tended to perpetuate political abuses.

E. M. Sait.

Abstract, Thirteenth Census of the United States. Washington, Government Printing Office, 1912.—643 pp.

This volume is the first general publication covering all the branches of inquiry in the census of 1910, population, agriculture, manufactures, and mines and quarries. The chief omission is statistics of occupation, which have not yet been fully tabulated. There will be eleven other bulky volumes, in which details for the smaller geographic units of the country will be presented: four volumes devoted to population, three each to agriculture and to manufactures, and one to mines and quarries. For one who desires the statistics of his own state, county, or city in detail, it is not convenient to search through the large volumes; and one of the chief merits claimed for the present *Abstract* is that it attempts to assemble for use in each state and territory, not only all the general results of the census but also the detailed statistics of that particular state or territory. This is accomplished by providing different supplements: a special edition of the *Abstract* is printed for each of the states and territories,

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the only difference being in the text of this special supplement. This plan is based on the assumption that the interest of any one person in local details does not usually extend outside of the state of his residence; and it is hoped that a wide distribution of the single volume will save the expense and inconvenience of printing and distributing a large edition of all the detailed reports.

In another respect the present *Abstract* is superior to those of previous censuses. Instead of giving statistical tables only, with a very limited amount of comparative material and without text or diagrams, it presents the explanatory text and general conclusions together with the tables and comparative material as a unit on any topic. This method is an advantage for anyone studying a particular subject. Maps and diagrams, which have usually been printed in a statistical atlas, are here employed to explain the tables and to emphasize the inferences found in the text. This method will increase the utility of the graphic devices.

There are no very radical changes in the population census of 1910, as compared with 1900. A question was added to the schedule, calling for mother-tongue statistics of the foreign-born population and of the parents of the native population of foreign or mixed parentage. The full statistics will appear in a special report. The results that are especially significant relate to the natives of five countries: Germany, Austria, Hungary, Russia and Canada; and these are presented in the *Abstract*. Hitherto, information concerning the origin of the foreign-born and their immediate descendants has been based exclusively on the country of birth. The wide differences in the characteristics of the several nationalities or races which come from a single foreign country, notably from such a country as Austria or Russia, make it desirable to distinguish by mother-tongue as well as by country of birth. The statistics of immigration have been kept for some time on this basis.

It is a matter of regret that the occupation statistics could not have been summarized in the *Abstract*, since this portion of the data regarding population is of wide interest to social workers, legislators, students and business men. It would have been a great convenience to be able to consult the facts regarding occupation in relation to other facts contained in the *Abstract* and its local supplement. Occupation statistics are to be presented in a separate volume. A new question was added to the 1910 schedule, requiring a statement both of the specific trade or profession and of the industry within which it is pursued. This will elicit information of great value concerning the number employed in different industries. Another new question distinguishes between em-

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ployer, employee and a person working on his own account; and the returns will throw light on the true industrial status of the population.

In an article published in the *Survey*, April 9, 1910, the director of the census declared that special emphasis would be placed on statistics of the family. "The agitation with regard to so-called race suicide makes a statistical study of the family imperative at this time." To furnish a more satisfactory basis for such statistics, the enumerators distinguished between those women married only once and those married two or more times. The number of years of the present marriage was asked for and the number of children born by each woman. It was hoped that information would be obtained concerning the tendencies of different classes of the population to maintain or lower the birth-rate. So far as the *Abstract* indicates, this hope is still unfulfilled. Only the usual facts as to the number of dwellings and families and the average number of persons per dwelling and per family are presented. "Dwelling" may mean a hut or an apartment house. These statistics are of very limited value. The average size of family, in the meaning given to the term by the census, is not significant for scientific or social purposes. What we wish to learn, from some authoritative source, is the facts concerning the fecundity of the women of various nationalities, of different social conditions, and at specific ages. It is a matter of regret that the Census Bureau has not presented more complete and scientific data concerning the family. It is indeed time for a scientific statistical study.

The reviewer has not been able to learn exactly in what form the supplements included in the copies of the *Abstract* sent to the states containing large cities, such as New York, Philadelphia and Chicago, will be presented. It is, therefore, necessary to postpone criticism on this feature of the plan. The statistics of large city communities are very important, because the problems of the city, social and economic, have a vital relation to the entire country. Accurate and detailed statistical knowledge concerning them is no longer a matter of local concern.

The census authorities are entitled to thanks for having contrived to reduce the weight of this book, as compared with that of preceding census volumes—a reform which not only makes the book easier to handle but increases its durability.

ROBERT E. CHADDOCK.

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BOOK NOTES

Dr. Delos F. Wilcox comes forward as a frank partisan of the initiative, referendum and recall in a volume entitled *Government by All the People* (New York, The Macmillan Company, 1912; xi, 324 pp.). He acknowledges, in the preface, his obligations to "the nameless pioneers who have spent their strength and haply lost their lives struggling to roll away the stone from the sepulchre of democracy; to William S. U'Ren and John R. Haynes, annunciators and provers on the other edge of the continent of the resurrection of the body politic; to William J. Bryan, Robert M. LaFollette, Woodrow Wilson and Theodore Roosevelt, the great apostles to the gentiles; and last but not least to Joseph G. Cannon, James R. Day, James W. Bailey, William Barnes, jr., and Nicholas Murray Butler, intrepid rearguards of retreating paganism." The issue, he says, has been squarely placed before the country as to whether government is a private industry or a public enterprise; and he therefore believes that a realignment of parties is "presently inevitable." Formidable as is the mass of literature on the subject, the appearance of this new contribution may be justified by its argumentative vigor and by the novel method of presentation. No attempt is made to discuss the specific forms of direct legislation which have been adopted or to measure their efficacy in the light of an experience which is so recent and so incomplete. Dr. Wilcox prefers to rest his case upon the abuses which have developed under the old system of checks and balances and upon the theoretical grounds for believing that the new system will correct them. The initiative, referendum and recall are considered separately and then in combination as an instrument of majority rule; and each of the forty-odd chapters is devoted either to pulverizing an objection or to developing a favorable argument. Although this may suggest the banality of a debaters' manual, never, as a matter of fact, is Dr. Wilcox prevented by his seriousness of purpose or his systematic method from writing with liveliness and humor. Nor will "retreating paganism" find it safe to turn upon the new champion without discarding some of the weapons which he has so obviously blunted.

City Government by Commission (New York, D. Appleton and Company, 1911; x, 381 pp.) gives an accurate and unbiased description of the movement which has spread so rapidly through our smaller

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cities during the last decade. All phases of the subject are considered, even to the point of presenting, in two chapters, the popular arguments for and against commission government. Like other volumes in the National Municipal League Series (noted in volume xxvii of this Quarterly, pages 554, 555), this one includes several papers read before recent conferences of the league. But more than half the book, including the historical chapters and an examination of the results achieved, has been written by the editor, Clinton Rogers Woodruff, whose familiarity with the conditions of municipal government in all parts of the country should give his conclusions unusual weight. To his mind structural simplicity and the ease of fixing responsibility are the most conspicuous merits of commission government; the general satisfaction expressed wherever it has been adopted is *prima facie* evidence of success; and a superficial review of conditions prevailing under the new system shows, almost invariably, an improvement over those which prevailed before. Nevertheless, as its adoption took place coincidently with the awakening of civic spirit in the United States, care must be taken not to give too much credit to the influence of structural changes. Good citizens make good government, whatever machinery they may use.

"City government, in its current operation," says Henry Bruère in his *New City Government* (New York, D. Appleton and Company, 1912; xxii, 438 pp.), "consists not of a series of momentous questions involving popular liberties, but of humble routine services which demand less of patriotism than they do of good business management." Naturally, holding this position, he has not approached the study of commission government quite in the spirit of Bradford or Woodruff or Hamilton. A single chapter of thirty pages (supplemented with instructive charts) suffices to describe the process by which the Galveston experiment spread, within a decade, to more than two hundred cities and to analyze charter provisions so as to show points of accord and divergence. The book is really occupied with an exposition of the new efficiency standards of city government and with an attempt to measure the success of commission-governed cities by applying these standards as a test. The exact methods of conducting the investigation are indicated. Information was gathered from ten cities, chosen in such a way as to be fairly typical; its character may be gathered from the chapter headings: "Accounting and Reporting Methods," "Purchasing and Storekeeping," "Budget-Making" *etc.* Under such a penetrating scrutiny some of the extravagant claims that have been made for the new system fare badly indeed. "Commission government, as a plan,

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has worked no revolution in the technique of city administration," we are told; in many particulars it has lagged "far behind" the cities which still continue under more complex forms of organization, both in breadth of service and skill of method. These and other general criticisms are well supported with detailed evidence. It cannot be said that they come from a hostile quarter, because Mr. Bruère is one of those who wish to Oregonize the nation, believing that direct legislation and the recall (frequently established in commission charters) "will become essential parts of the American plan of self-government."

The extent to which sentiment in our western states is behind the movement to make the state governments more effective agents of progress is indicated in the excellent *Papers and Proceedings of the Fifth Annual Meeting of the Minnesota Academy of Social Sciences* (published by the Academy, 1912; 181, iv pp.), edited by J. S. Young. The general topic at the meeting was "State Wide Coöperation" but the special papers and discussions covered such subjects as the reorganization of the state departments, socializing the school, the state and problems of social pathology, the state and water power *etc.* In practically all of the papers the idea of a wider coöperation was emphasized.

Peculiar difficulties must have faced Mr. Herbert Croly in the preparation of his biography of *Marcus Alonzo Hanna* (New York, The Macmillan Company, 1912; xiii, 495 pp.). In the first place, the political activities of the great tactician and manipulator, seldom having been made a matter of record in any way, had to be pieced together from the uncertain recollections of business and political associates; and, again, as he was a man who had many warm friends and many bitter enemies, his character has naturally suffered from every manner of distortion. In endeavoring to bring the real Hanna back to life, Mr. Croly may have erred somewhat on the side of sympathy. He refuses to see in Hanna "the embodiment of greedy, brutalized and remorseless plutocracy" or to believe that politics was with him merely a useful adjunct to business. We are told with portentous emphasis that he was "flexible" and that therefore his personality and career had essentially a social value; that his unscrupulous individualism was redeemed by the conviction that in doing well for himself he was doing well for society; and that this conviction simply represented the dominant political thought among small traders and proprietors down to the closing years of the last century. Hanna, in other words, did not have the prophetic eye of Johnson or Bryan; he was the child of his environment, "formed under the same influences as hundreds of other men in

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the Middle West who combined a business with a political career. . . . His system deserves to be considered, not as incarnate plutocracy, but as the product of those conditions from which Mark Hanna himself derived it—that is, from the actual political and economic tradition and practice of the American Middle West." And the book closes with the plea that, while Hanna's system may not make for social fair play, those who reject it should be the more willing to recognize the good faith of the man. It need hardly be said of Mr. Croly that he has executed his task admirably, taking always a broad, philosophic view and showing a rare insight when he comes to interpret the complicated movements of our political life. The last two-thirds of the book, covering the period from 1896 to 1904, give a most illuminating description of party methods before our twentieth-century radicalism took hold of them.

As might be expected, Professor Chester Lloyd Jones's *Readings on Parties and Elections in the United States* (New York, The Macmillan Company, 1912; 354 pp.) is compiled from many heterogeneous sources—public records, pamphlets, magazines, newspapers, statutes and judicial opinions—but the reader is pleasantly surprised by the numerous and generous transcriptions from the work of special students who have written in the last decade. Extracts from the classic commentators (which of course means dead commentators) have always formed a part of such collections, but chapters from the books of living colleagues are an innovation. Not a few books are written around one idea; and if the idea is a good one, the process is deemed legitimate. This editor regards it as his office to select the best statements of various theses and to include them in one convenient volume. As supplementary reading for advanced classes in politics, Professor Jones's new work will be found a good eclectic summary and a guide to further browsings.

In his *Readings in American Constitutional History, 1776–1886* (Boston, Houghton, Mifflin Company, 1912; xvii, 584 pp.), Professor Allen Johnson has brought together a body of material to illustrate the development of American government, state and federal. This material, unlike that in Professor MacDonald's volumes (with which it is natural to compare Professor Johnson's book), is classified under topics of broad scope which are sub-divided into chapters, each of which the editor has prefaced with a brief introductory and explanatory note. The volume is the outcome of the conviction that the "case system" may be profitably applied to the study of American constitutional history. It is well adapted for use by college classes.

Students of American politics will notice with satisfaction the appear-

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ance of a supplement to Edward Stanwood's invaluable *History of the Presidency* (Boston, Houghton Mifflin Company, 1912; 298 pp.). The new volume, which carries the narrative through the elections of 1900, 1904 and 1908, has a somewhat wider scope than its predecessor. As before, the book gives the platforms of all the parties, the chief incidents marking the nomination of candidates, the more salient features of each campaign and an analysis and tabulation of the electoral vote; but the occurrences under each administration, instead of being considered only so far as they bear directly upon the ensuing election, are treated comprehensively, after the fashion of a political history. Though writing in the heat of last year's campaign and thus running an obvious peril of partisanship, Dr. Stanwood has managed to discuss the Roosevelt administration without showing where his sympathies lie. He does, however, close his last chapter—"The Evolution of the Presidency"—with a serious warning against Cæsarism. In an appendix will be found the platforms adopted by the five national parties in 1912.

A Guide to the Study and Reading of American History (Boston, Ginn and Company, 1912; xvi, 650 pp.) by Edward Channing, Albert Bushnell Hart and Frederick Jackson Turner is a revision and enlargement of the well-known *Guide* by Channing and Hart published in 1896. While the arrangement of the first edition is in general adhered to, the work in its present form is in several respects more satisfactory than the original. It has been brought thoroughly up to date and contains references to the immense mass of historical literature which has appeared since 1896. In the increase of attention paid to the West one sees the influence of Professor Turner. The newer tendencies in historical study are reflected in the greater emphasis placed throughout upon social and industrial development. Particularly noteworthy and to be commended is the last part on "Recent United States History," the work of Professor Turner. This constitutes the best single bibliography available for the period since 1865, to which no consideration was given in the original edition.

Practically unique in its field is the bibliographical guide for teachers of history, prepared jointly by Charles M. Andrews, J. M. Gambrill and Miss L. L. Hill and published under the title: *A Bibliography for Schools and Libraries* (New York, Longmans, Green and Company, 1911; xiv, 224 pp.). It is descriptive as well as selective, and the selection has been made with great good judgment. The Association of History Teachers of the Middle States and Maryland is to be congratulated at having secured the services of so competent editors for an

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enterprise obviously of direct importance to them in their effort to build up a more scholarly attitude toward their work in secondary schools.

In *An Artillery Officer in the Mexican War, 1846–47* (New York, G. P. Putnam's Sons, 1911; xvi, 339 pp.) we have a collection of letters of Captain Robert Anderson, of the United States Army. The letters, as now published, are edited by his daughter, Eba Anderson Lawton. They relate, as the title indicates, to the campaign against Mexico. Captain Anderson belonged to the forces under the command of General Scott, and, as he states in one of his letters, "threw the first shovelful of earth in breaking ground for the attack on Vera Cruz." In the subsequent advance to the city of Mexico he was wounded and, being seriously disabled, was in October, 1847, ordered back to the United States. The letters show in this gallant officer, who was later to become the "hero" of Fort Sumter, a happy combination of high moral sentiments with devotion to professional duty. Like many other soldiers, he had a very poor opinion of war as a means of settling national differences, pronouncing "absurd" the scheme of "killing each other to find out who is in the right!" The fact that his letters were subject to the risk of capture in transit no doubt accounts for his occasional silence upon questions whose discussion might have thrown light on military history.

Mr. Allen French has undertaken to write a "brief and readable account" of *The Siege of Boston* (New York, The Macmillan Company, 1911; 449 pp.). He reviews the progress of the controversy with Great Britain, so far as it affected Boston, before taking up the history of the siege. The book can hardly be described as brief, but it is agreeably written. Of the events which the author describes, however, we have already almost a superfluity of narrations, some of which are as readable as his.

Since Professors H. L. Osgood, C. M. Andrews and others began conducting seminars in American colonial history, some twenty years ago, and the results of researches made by themselves and their students began to appear in print, we have ceased to view the history of our colonial era simply as a preface to United States history proper, and have come to regard it as being also a distinct part of the history of the British Empire. Professor Root, in *The Relations of Pennsylvania with the British Government, 1696–1765* (New York, D. Appleton and Company, 1912; iv, 422 pp.), views his subject from this standpoint. His theme, however, is broader than the title of his book: while Pennsylvania is the colony in which his narrative centers, he gives a complete exposition of the British colonial system as it existed during

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the period surveyed. He describes in detail the central institutions of colonial control, the administration of the Acts of Trade, the court of vice-admiralty, the royal disallowance and so forth. Professor Root's statement of the reason for the failure of the system is suggestive. "The English theory of empire was primarily economic. Its enforcement required that the colonies should be strictly subordinate to the law and sovereignty of the mother country. The success of the policy implied a large measure of political and social unity between the province and metropolis, and a sense of pride in the empire on the part of the colonists. They did not exist. Self-control and not English control was the chief desire of the colonists." The work is accurate and well written, and will prove helpful to students of British colonial history.

Two or three years ago the Reverend F. W. Bussell, fellow and tutor of Brasenose College, Oxford, published two substantial volumes on *The Roman Empire* (London, Longmans, Green and Company, 1910; xiv, 402, xxiii, 521 pp.). The subtitle, *Essays on the Constitutional History from the accession of Domitian* (81 A. D.) *to the retirement of Nicephorus III* (1081 A. D.), and the first sentence of the Introduction, in which the author says that these essays are "written for the use of the general reader and modern politician" and that their purpose is "to add a modest contribution to the interpretation of the imperial system," accurately state the scope and aim of the work but do not suggest its somewhat peculiar character. The book may fairly be described as a history, in which the narrative is interrupted, not only by occasional digressive retrospects, but by frequent excursions into comparative politics, political philosophy, social psychology, economics, law and other branches of social science—excursions which vary in length from a clause to a series of pages and which, taken together, constitute a very large portion of the work. As the author's personal views are frequently hinted rather than expressed, it is somewhat dangerous to try and state them. It seems clear, however, that he doubts the capacity of large groups of men to govern themselves in any real sense, and that he thinks that the least unsatisfactory form of government, on the whole, is that kind of monarchy in which the activity of the monarch is controlled by the theory—held by his subjects and accepted by himself—that he is their representative and that his authority rests upon their consent. Such a monarchy works particularly well if the ruler is animated by a paternal sentiment towards his people. But he must really rule. In the Roman Empire, as in the empire of the Franks, in Japan, in Thibet, and in Russia, it has proved disastrous to convert the monarch into a secluded and inactive source of authority and to permit the government

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to be carried on in his name by another, whether that other be a prætorian prefect, a major domus, a shogun, a high priest or a prime minister. On other questions also the author indicates views that are not commonly held, or at least not usually avowed, at the present time in democratic countries. There is much in the book that is worth reading, but its lack of structure—and it may be added its somewhat involved and allusive style—make it hard to read.

Even in Great Britain, where the classical tradition is strong, neither the general reader nor the modern politician would look primarily to a book on the Roman Empire for direct illumination of the dark places in modern politics, and neither would, as a rule, have the patience to struggle through the palace intrigues of mediæval Constantinople for the sake of the somewhat fitful lights which Mr. Bussell's digressions offer. It is probably for this reason that the author has presented his views more directly and more concisely in *A New Government for the British Empire* (London, Longmans, Green and Company, 1912; xiv, 108 pp.). His diagnosis of existing conditions reveals "national peril, wasted resources and suspended energy." Half the electorate, as good as disfranchised for the time being, criticizes and grumbles. Government is unpopular, and the gravest danger lies in lack of respect for rulers and authority, fostered by campaigns of ridicule and abuse. The state has assumed the nature of a benefit society; *laissez faire* is everywhere extinct: and all signs and symptoms point to greater activity of government. The House of Commons, under the pressure of the Cabinet, has sunk to the level of a mere *lit de justice* for the registration of the dictator's measures, "an arena of invective, of inconclusive arguments and foregone conclusions." The peoples' delegates are not genuinely representative, and "the tie between members and constituents often sits very loosely." The remedies proposed are somewhat startling. The Commons should be dissolved, and separate parliaments established for each section of the British Isles. For dealing with the larger questions of imperial concern the monarch should again use his prerogative and select his own ministers. The Upper House should be transformed into an Imperial Senate. The peerage should elect one-sixth of the number of this Senate; the United Kingdom should provide one hundred members, and the colonies and dominions should choose another hundred. It is perhaps permissible to ask how long the monarchy would survive its reappearance as a personal factor in English politics, and whether the reserve fund of loyalty would prove as inexhaustible as the author imagines—whether, in short, Mr. Bussell's plan would not be the speediest method of "courting Revolution." The

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essay is dedicated to the Earl of Rosebery, who "in the painful friction and short-sighted opportunism of politics and statesmen of to-day . . . has always set a far higher standard, and has always achieved a far higher ideal."

M. Ernest Lémonon's *L' Europe et la politique britannique, 1882–1911* (Paris, Félix Alcan, 1912; x, 524 pp.), which was first published in 1910 and was well received, has now appeared in a second edition. In this edition the book is revised, corrected and brought down to date, and it contains an appendix on the English constitutional crisis of 1909–1911. This is an important addition, in view of the close and sometimes vital connection between foreign policy and domestic political conditions. It is of interest to note that England and the spirit of the English people appear to M. Lémonon to be quite different to-day from what they were in the days when England and France were antagonists. This is perhaps not strange, for French writers are not less inclined than are those of other countries to regard the foreign policy of their own government as a high example of unselfishness. A reader would be lacking in circumspection who should fail to bear in mind this circumstance when estimating the judgments found in books. But E. Lémonon, who is a careful student, does not withhold from us the facts; on the contrary, he gathers them with industry and thoroughness and sets them before us fully. His views upon the relations of the powers in the Near East are especially interesting at the present time. In order to oblige Germany to adhere to a policy based on the principle of European equilibrium, it is not, he thinks, enough for the parties to the Triple Entente to strengthen the bonds that unite them; they must show favor in every way to the formation of a strong Balkan confederation, which, if not hostile to the Austro-German league, shall not be dependent upon it. To this end they must assist the Balkan states, and particularly Servia, to develop their military and economic forces. This policy the Triple Entente must, he maintains, pursue without hesitation or feebleness, if it wishes to prevent Austria, backed by Germany, from planting her flag on European Turkey and the entire Balkan peninsula.

A suggestive, though elementary, outline of the broad field of nineteenth-century history is supplied us by MM. E. Driault and G. Monod in the revised edition of their *Évolution du monde moderne, histoire politique et sociale, 1815–1911* (Paris, Félix Alcan, 1911; 699 pp.). The general scope of the work as well as the fine enthusiasm of the authors is displayed in the opening note: "The nineteenth century is the century of struggles for liberty. Glorious victories will be won; an

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irresistible progress will be made; humanity will be educated through rapid evolution to a happier social position. The century will free serfs and slaves and thereby remove one of the most frightful miseries of modern times. It will raise the people little by little from the condition of subjects to that of citizens. It will break the chains of oppressed nationalities. It will insure the development of industry and trade by destroying the barriers between peoples, and, despite protectionist doctrines, will afford the world a remarkable economic unity; it will consolidate all nations. It will inspire generous attempts to emancipate the laborer and relieve him of the heaviest burdens of his lot. It will save art and literature from rule of thumb and will multiply the sources of inspiration. In freeing the human intellect, it will marvelously expand science. It will produce throughout the period a veritable ebullition of ideas and passions; it will be marked by violent conflicts between self-interest and sentiment; it will give the present a rare intensity of life, whether political, social, intellectual, or moral. Amid struggles which at first appear quite confused, there will be gradually evidenced the great fateful current of civilization in which men forever seek and find greater justice and greater truth." The volume differs little in general arrangement from M. Seignobos's *Political History of Europe since 1814*, but is less encyclopædic, more interesting and naturally more up-to-date.

In sharp contrast to the foregoing stimulating appreciation of the nineteenth century is L. Cecil Jane's *From Metternich to Bismarck* (Oxford, Clarendon Press, 1910; 288 pp., 8 maps). It purports to sort out what is important from what is not, with the not unusual result that to many students the "essentials" sometimes seem unilluminating. It is most narrowly political, and its content cannot at best be characterized as much more than an epitome of Mr. Alison Phillips's *Modern Europe*. Everything centers about the "Metternich System," the "Independence of Greece," and the unifications of Italy and Germany, the last of which is treated in two chapters under the picturesque headings, "Fall of Austria" and "Fall of France." Having thus summarily overwhelmed those ancient states, the author properly labels the last chapter "The Bismarck System" and stops short in the year 1878. The style is distinctly depressing.

The Abbé Sieyès, by J. H. Clapham (London, P. S. King and Son, 1912; 275 pp.), will never suggest to any reader the familiar remark about the servile relation of a biographer to his subject. Mr. Clapham clearly indicates a very unflattering opinion of Sieyès and all his works. The volume, moreover, does not pretend to be a biography; it under-

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takes to give an analytical account of the political ideas of the Frenchman, as revealed in his public writings and general activities. This purpose of the author is admirably carried out, and the book is therefore a valuable addition to the material in English for an understanding of the thinking that was potent in the thick of the Revolution.

Among recent attempts to popularize history and retrim the "beacon lights" is Mr. R. P. Dunn Pattison's *Leading Figures in European History* (New York, The Macmillan Company, 1912; 471 pp.). The book undertakes to outline the whole field of continental European history from the disruption of the Roman Empire to the present time in a series of biographies of sixteen celebrities. The introductory chapter summarizes political events in the later Roman Empire and presents the conventional Charlemagne. Then come, likewise quite conventionally, Richard the Fearless, Duke of Normandy, Pope Gregory VII, Philip Augustus, the Emperors Frederick II and Charles IV, Lorenzo the Magnificent, Columbus, Luther, Philip II, Gustavus Adolphus, Louis XIV, Frederick the Great, Napoleon, Cavour and Bismarck. Each biography is prefaced by a brief narrative to fill the chronological and political gap between the lives of the figures chosen. The conventionality of the work preserves many old-time generalities, including mistakes and misapprehensions, which are reiterated with naïve seriousness. Thus, "there was a general belief that the world would come to an end in the year 1000" (page 42); Gregory VII "gained the title of Great" (page 84); and on the eve of the Revolution of 1789 the French peasantry were much worse off than any other people in Europe (page 358)! The book is as interestingly written as it is surprisingly inaccurate.

A French translation, by Maxime David, of the first part of Eduard Meyer's *Geschichte des Altertums* has appeared under the title: *Histoire d l'antiquité; Introduction à l'étude des sociétés anciennes* (Paris, Paul Geuthner, 1912; viii, 284 pp). The translation appears to be well done, and the book will be welcomed by those who appreciate the lucidity of Gallic texts in philosophic and scientific treatises. This is the introduction which Professor Meyer wrote as a sort of supplement to his history, to embody the newer anthropological point of view. In it he also discusses both comparative and historical methods and presents a slight survey of antique historiography. It is a pity that this work is not accessible in English.

A thorough and careful analysis of the political conceptions of St. Augustine is presented by Dr. Otto Schilling in *Die Staats- und Soziallehre des heiligen Augustinus* (Freiburg im Breisgau, Herder, 1910;

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x, 280 pp.). After a survey of the political, scientific and social setting of Augustine's work, it proceeds to a criticism of the conception both of the *civitas terrena* and the *civitas Dei* as presented in his various treatises. There is a good discussion of sources, with helpful references. The book bears the *imprimatur* of the bishop of Freiburg.

The Trade of the East India Company from 1709 to 1813 (New York, G. P. Putnam's Sons, 1912; viii, 186 pp.), by E. P. Robinson, is a very readable little contribution to the knowledge of an important phase of European expansion. Basing his treatise on the standard secondary works, with an occasional venture into original materials, the author traces the gradual development of a trading corporation into a political power, and describes the economic and other causes leading to this transformation. Of especial note is the effort made to show that the establishment of British dominion in India began much earlier than is commonly supposed. The secret of the success of the English East India Company is attributed in large degree to its freedom from an organic dependence upon the government at home, in contradistinction to the plight of its Dutch and French rivals.

Thanks to the large number of publications now available on the subject, Harry Weston Van Dyke, in *Through South America* (New York, Thomas Y. Crowell Company, 1912; xxiv, 446 pp.), has shown how one may write an acceptable book about countries which apparently he has never visited. An historical sketch covering 133 pages is followed by a description of each of the ten republics and of the Guianas. A list of books, also, is provided, which is remarkable chiefly for the alphabetical distortions of its titles. Since the book is a compilation expanded from a series of articles prepared for reading circles, it would hardly be fair to treat it as a work of serious character either in form or in content. The author's industry is to be commended, whatever may be said about his critical understanding of his sources of information.

In *The American Mediterranean* (New York, Moffat, Yard and Company, 1912; xiv, 488 pp.), Stephen Bonsal has brought together his impressions of numerous visits to the islands and countries in and around the Caribbean Sea. His material, some of which has been published before in newspapers and magazines, is presented in the easy and unsystematic fashion of the journalist. Moving pictures of personages and events, peoples and products, natural beauty and human depravity, or the reverse, dissolve into one another, leaving in the mind much to amuse and much to ponder over. As a concession to those who crave stronger stuff, Mr. Bonsal furnishes some miscellaneous appendices of political, social and commercial import. His main

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object, it would seem, is to focus attention on the question of the future relations of the United States to "non-contiguous territory and to populations alien in race and in institutions" (page 28). He calls vigorously for an abandonment of our "drifting course," as he terms it, and for the formulation of a definite policy toward our insular and continental neighbors to the southward, which will enable us to "maintain some control of our ship of state." He is disposed to believe that the lands and peoples of the regions concerned must yield inevitably to the superior civilization of this country. He scorns the "representatives of the people in Washington who are ignorant of the fact" that "the rabidly anti-American among Latin-American politicians make what capital they can" out of our seizure of the Panama Canal Zone, and, "unacquainted with the conditions by which the Administration was confronted, assist them in their purpose of vilifying our country by their sophomoric effusions" (page 222). Still more contemptuous must be his opinion of Americans who assert their freshman notions that Colombia somehow did not get a "square deal" from the wielder of the "big stick." If mere international morality can be set aside by apt illustrations of occasional rascality among the dwellers round about the inland sea, and if the direction of the pathway of national progress, over which the eagle should prepare to wing his flight, can only be made clear, the writing of *The American Mediterranean* will not have been in vain.

The relation of the French Revolution to the development of thought and institutions in the Latin-American countries has frequently occupied the attention of publicists and men of letters in the southern republics; but so far their writings on the subject have taken the form of essays rather than of systematic treatises. Accordingly the appearance of *La Révolution française et l'Amérique du Sud* (Paris, Bernard Grasset, 1912; 412 pp.), by Luis Alberto de Herrera, translated from the Spanish original by Sebastian G. Etchebarne, might justify the hope that some authoritative interpretation of the revolutionary movement, in its application to the Latin states of the new world, had become available. An examination of the present work, however, reveals no careful study of historical data, such as would serve to make the relationship clear. Instead, the method of treatment suggests a certain amount of philosophizing about the political and social evolution of France, more or less in connection with the vicissitudes through which the republics in South America have passed. The book has some value in accentuating the demand for a really scientific discussion of an interesting theme. In all other respects it is simply an additional

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contribution of the school of Latin-Americans, largely resident in Paris, who strive to aid the propaganda which France is promoting in behalf of its intellectual domination among the countries of Hispanic stock.

The "discovery of Latin America," now being carried on so actively, is not confined altogether to the people who had no immediate share in its colonization. *La República del Paraguay* (Madrid, Victoriano Suarez, 1911; 276 pp.) and *La República Argentina* (Madrid, Victoriano Suarez, 1912; xii, 488 pp.), by Adolfo Posada, the distinguished publicist of the University of Madrid, afford capital examples of the intellectual interest that Spain also is taking in her former dominions. While it was not a difficult task, perhaps, to contrast the rich, progressive and powerful Argentine Republic with the poor, backward and feeble Paraguay, the author has described the two countries from so many enlightening points of view that the individuality of each is made apparent without undue emphasis upon the superiority of the one or the inferiority of the other. In some measure a record of a traveler's observations, the subject-matter is quite exhaustive in its scope and unusually reasonable in its treatment. The multiple phases of the civilization developing in the two states are examined with the discernment of the judicious scholar and the kindliness of the amiable visitor. Like his famous predecessor, Rafael Altamira, who served as an educational Columbus on behalf of the mother country, so now Professor Posada, following in his wake, contributes a number of "impressions and commentaries" that are of great value to those who would learn what Spain of the present time thinks of two of her descendants and their varied fortunes.

In *La synthèse en histoire, essai critique et théorique* (Paris, Félix Alcan, 1911; xvi, 272 pp.), M. Henri Berr, the learned director of the *Revue de synthèse historique*, has undertaken to review the more recent controversies which have been waged, in his own journal and elsewhere, over the fundamental problems of historical method. The survey is admittedly incomplete, since German theories are expressly reserved for discussion in a later volume; and since English and American contributions receive practically no attention, it may be that a third volume is projected for the Anglo-Saxons. It occasions no little surprise that schools of historical thought should be defined by geographical frontiers, and much of what M. Berr works out for southern Europe will be accepted as equally valid for the United States. The reader learns from a wealth of erudite references to continental treatises and essays that serious debates on historical method are at present confined in France to a small number of problems. It appears

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that historical method depends in future upon the outcome—probably a compromise—of the contemporaneous conflict between two kinds of philosophical and sociological speculation. On the one hand are the intuitionists, such as Croce and Bergson; who practically would have the historian adopt the methods of æsthetics. On the other hand are the sociologists who follow Durkheim and emphasize the dependence of the individual upon the social consciousness, maintaining that history, if it is to be worth while, should painstakingly investigate the institutions and the phenomena of social life, with the ultimate object of exploring and classifying the "collective mind."

The Essentials of International Public Law (New York, The Macmillan Company, 1912; xlviii, 558 pp.), by Dr. Amos S. Hershey, professor of political science and international law in Indiana University, is designed, primarily, to furnish the teacher and student with "an up-to-date text adapted to the needs of the classroom." To this end the author has confined himself to what he regards as the essentials of his subject, relegating "minor and controversial details" to the footnotes. Judgments no doubt would differ as to what is major or minor, and as to what is controversial or non-controversial; but the volume is well supplied with bibliographical information, with the aid of which the reader may pursue his studies into wider fields. Pursuing the latest developments, the author deals with questions both of "Aërial Space" and "Aërial Warfare," and furnishes bibliographical references for each of the topics.

War and its Alleged Benefits (New York, Henry Holt and Company, 1911; vi, 130 pp.), written by S. Novicow, vice-president of the International Institute of Sociology, and translated by Thomas Seltyer, treats of war in its various aspects, and maintains that, whether viewed as an end or as a means, it is an evil, on physiological, economic, political, intellectual and moral grounds. The author's own attitude towards it is indicated by his describing it as "collective murder." Not the least important of his chapters is that on the "psychology of war," in which he argues that if we could dispel the illusion that our neighbor is always the aggressor, and make the masses understand that "we violate the rights of others, just as others violate our rights," no one would go to battle. There is much truth in this proposition, but perhaps the most difficult thing in the world is to make people, in the mass or individually, believe that an adversary is in the right. It would be much easier to do this if it were always the case that, as the author affirms, "the people hate war." It is by no means clear that this is invariably so. On the whole it may be said that the author's argument is clear, compact and suggestive.

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Giorgio del Vecchio's book entitled *Il Fenomeno della guerra l'idea della pace*, noted in this Quarterly last September (volume xxvii, page 560) has been translated into Dutch (Harlem, Ervin F. Bohn, 1911; 46 pp.). C. R. C. Herckenrath is the translator.

To the rapidly growing lists of books upon the social aspects of religion Professor Maurice Vernes, of the École des Hautes Études at Paris, has contributed a valuable historical synthesis, *Histoire sociale des religions* (Paris, V. Giard, 1911; 535 pp.). The author deals successively with Judaism, Paganism, Christianity, Islam, Roman Catholicism and Protestantism. The book is written in a style for general readers and with a somewhat obvious attempt at impartiality; but one who is in search of facts upon which to base his own conclusions will find the author's statements rather wordy and will miss definite references to original sources.

Professor James Quayle Dealey of Brown University has prepared a monograph upon *The Family in its Sociological Aspects* (Boston, Houghton, Mifflin Company, 1912; iv, 137 pp.), which will be read by others than students of sociology. The author is progressive in his attitude toward divorce, and outspoken, and those who are disquieted by the apparent disruption of the family to-day will find here suggestions that may serve as an antidote to their fears. It is to be regretted, however, that the historical sections leading up to this enlightened survey are rather deductively conceived than worked out from the data of comparative anthropology. Dr. Dealey proceeds from the evolutionary premises to present a clean-cut evolutionary survey, and, whether from limitations of space or point of view, gives his reader the impression of one universal process for all mankind, from brute life with seasonal relationships through a growing male tyranny to civilized social formations. A sort of purposive thread links it together; priests invent taboos *etc.* This part of the book naturally stands in the way of the clarified treatment of modern problems, which is, we imagine, what Dr. Dealey has most at heart. Clarity in a complicated subject is a merit in a teacher but may mislead a scholar by the elimination of difficulties. But one must always reckon with the limitations of space in a monograph.

By compiling and publishing his *Social Psychology: An Analytical Reference Syllabus* (Nebraska University Press, 1910; 88 pp.), Professor George E. Howard has rendered a distinct service both to students of psychology and to students of sociology. The literature of social psychology is probably more scattered and less well organized than that of any other subject of equal importance; and any intelligent

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effort to index it in a systematic fashion, even if made with less discrimination than Professor Howard's pamphlet evinces, would be welcome. In addition to a select bibliography, alphabetically arranged, it gives topical references under the three main heads of "Characteristics of Social Psychology," "Suggestibility and Imitation," "Opposition or Counter-Imitation." These rubrics suffice to show that the subject is viewed from the standpoint of a sociologist rather than of a psychologist, but the twenty sub-headings are detailed enough to make the syllabus and annotated bibliography available for students who approach the subject on very different sides.

M. A. Alhaiza is at least an admirer if not a devotee of Fourier's, and his pamphlet, entitled *Charles Fourier et sa sociologie sociétaire* (Paris, M. Rivière et Cie, 1911; 77 pp.), gives a concise story of Fourier's life and describes the first disciples and the early attempts to establish the coöperative colonies of which the French reformer dreamed. It reviews Fourier's books and describes his system and the application and offshoots of the system. The last chapter outlines the history of "L'École Sociétaire" since Fourier's day, and is followed by a bibliography and several tables of historical interest. The pamphlet is written from the inside rather than from the outside; it coördinates the *New York Tribune* of Horace Greeley and the *London Phalanx* as the foreign periodicals devoted to Fourierism. Its enthusiastic tone makes it easy to read.

According to the writers who have collaborated in producing *The Foundations of Freedom: the Land and the People* (Middletown, John Bagot, 1912; 158 pp.), Henry George's past honors are insignificant compared with those yet in store for him. "Progress and Poverty," we are assured in the introduction, is soon to "take its place alongside the Good Old Book, of which it is the counterpart." To glorify George seems indeed to be the main object of the volume. It is a collection of short essays by ardent single-taxers of various countries, most of them worshipers of long standing. Except for some interesting biographical material, there is little that is new in the book. Its general character is, of course, propagandist rather than scientific.

The socialist movement in this country is undoubtedly regarded with easy tolerance. Socialistic criticism of the existing order and socialistic promises for the future are, for the most part, allowed to pass unchallenged. In *Political Socialism: Would it Fail in Success?* (Cherokee, Iowa, J. S. Crawford, 1912; 110 pp.), J. S. Crawford attacks the socialistic movement from every possible angle. He challenges socialistic criticism when, for example, against the charge that prostitution

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grows out of economic pressure he cites the fact that domestic servants at good wages cannot be obtained; he challenges the spirit of socialism in an effort to show that it is born of greed and of ambition; he challenges the ideal of socialism in his claim that it would result in inefficiency and tyranny; and he challenges the methods of socialism in his attempt to prove that they are essentially revolutionary and violent. The little book discloses its author as a wide reader and, on the whole, a not unfair critic.

The third edition of books iii and iv of Böhm-Bawerk's *Positive Theorie des Kapitales* (Innsbruck, Wagner'sche Universitäts-Buchhandlung, 1912; ix, 212–652, 173–477 pp.) is noteworthy for the numerous critical "Exkurse," which aggregate three hundred pages. In these the author treats a number of topics which his critics have raised. Professors Clark, Carver, Davenport and Fisher, among Americans, are mentioned and extensively discussed, and detailed attention is paid to his European critics as well. Sixty-eight pages are given to Professor Fisher's criticism of the author's "third cause" of interest. In the course of this polemic, the author discusses Professor Fisher's use of the method of simultaneous equations in economic theory, and holds that this method has significance only as a method of calculating quantities, such as the rate of interest, and that it gives no answer at all to the more fundamental question as to the causes governing these quantities. There are discussions of technical psychological questions, which show that the author is little disposed to modify his hedonism, despite his disclaimer of that doctrine, and an interesting criticism of Bentham (Exkurs XI) for putting the objective fact of a rate of interest behind his psychological doctrine that we esteem future pleasures less than present pleasures. The point discussed does not appear to suggest to Professor Böhm-Bawerk the possibility that both Bentham and he have been constructing psychological mythologies modeled on objective price phenomena.

The Laws of Supply and Demand, with special reference to their influence on over-production and unemployment (Boston, Houghton, Mifflin Company, 1912; xxvi, 289 pp.) by G. B. Dibblee, formerly a fellow of Oxford, is an effort to reconstruct economic theory from the standpoint of the practical man. The preface states that the author's reading in the field to be reconstructed is scanty, and the text gives abundant evidence of the correctness of the statement. There is a very considerable waste of intellectual effort in making distinctions and developing concepts which a little more reading would have put into the author's hands in much more usable form. The book is badly con-

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fused in its general scheme, and there is much irrelevant matter. It is, however, readable, and contains many acute criticisms and keen observations on human nature and on the facts of business. The author is in revolt against the doctrines which put human minds into mechanical schemata, and finds plenty of facts which refuse to conform. As an insurgent protest it is worth while; its constructive doctrine is vague and of little value.

In addition to his *Outlines of Political Economy*, reviewed above, page 149, Professor S. J. Chapman of the University of Manchester has just published, in the Home University Library series, a compressed, popular treatise on *Political Economy* (New York, Henry Holt and Company, 1912; 256 pp.). There are only nine chapters in the book, including the Introduction, which deals with "scope and method." The other chapters take up demand and supply in their relation to price, monopoly, money, international trade, the shares in and the problems of distribution. At the end Professor Chapman gives also a short note on books. The style is popular and the theories expanded are in general those made familiar by Professor Marshall.

Owing to its seductive title and to some undeniable merits, F. C. Laycock's *Political Economy in a Nutshell* has recently been translated into French by a Mlle. Didier. The title in French, *L'Économie politique dans une coque de noix* (Paris, Félix Alcan, 1912; xvi, 232 pp.) is, if anything, more alluring than the English original. Moreover to the French edition Yves Guyot has contributed an interesting introduction.

In his new book entitled *Auditing, Theory and Practice* (New York, The Ronald Press Company, 1912; xxix, 673 pp.), Mr. Robert H. Montgomery has for the first time approached the subject of auditing from the standpoint of broad construction. To his mind, auditing is the science, not of discovering fraud for the purpose of prosecuting the perpetrator, but of disentangling from accounts the truth, for the purpose of assisting the business man to improve the management of his business and to increase its profits. The beginner as well as the old practitioner will find the chapter entitled "How to Begin an Audit" especially suggestive. The author opens his treatment of the balance-sheet audit with a discussion of the principles upon which such an audit should rest. His chapter on depreciation is illuminated by a number of tables. High praise must be given to the part of the work which deals with the methods of auditing different kinds of concerns. In his discussion of some of the special audits, however, his directions are somewhat vague. His suggestion as to the audit of educational insti-

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tutions could be improved; he neglects a great group, for example, universities sustained by the state; he fails to point out weaknesses in the organization of university accounts in general and to suggest methods for overcoming the difficulties in such accounts. The style of the book throughout is pleasing. On the whole it is, without question, the best book on auditing that has thus far appeared.

Five new volumes of the *Modern Business* series, Volumes VII–XI (New York, The Alexander Hamilton Institute, 1911; xxix, 443, xxv, 505, xxiii, 651, xvii, 468, xx, 512 pp.), together with one additional volume which will be noted later, complete a set of books which has in view a very commendable purpose. The editors of this series have selected as their target the "man in the street," a personage who has been under a hot fire in the recent past from exponents of applied economics of varying degrees of ability as marksmen. The purpose throughout has been avowedly not to extend the boundaries of knowledge, but rather to organize and present that which is already known in such a manner as to bring it within the comprehension of an intelligent reader who has missed the advantage of special preliminary training and who must forego the benefit of thorough class-room discussion. Books of this type are likely to weary the professional economist by their continued emphasis upon *how* the details of business are carried on and by their studied neglect of the *why* of the particular type of business activity under discussion. In regard to treatment, uniform excellence is not to be expected in a series which constitutes the joint product of numerous individuals; some of the volumes seem to be much better done than others. But taking them all together they measurably attain the object the editors set before themselves.

Volume VII of this series, by Thomas Conway, jr., and A. W. Atwood, deals with *Investment and Speculation*. So far as it goes it is a good, workable treatise, the subject-matter being set forth in a clear and interesting way. But it is written purely from the "market" point of view, the general economic function of speculation being quite neglected. Speculation in produce is hardly referred to. The treatment of *Fire Insurance* by E. R. Hardy in Part I of Volume VIII, is full, but it is so technical that only an expert can tell whether it is accurate and complete. Part II, *Real Estate*, is written by Walter Lindner. The treatment throughout is descriptive rather than interpretative. Moreover, many of the topics discussed in detail are legal in their nature and it is a safe assertion that not one real-estate man in a hundred is informed about them. They are things for which he naturally depends upon his lawyer, and it is questionable whether such technical legal matters,

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however ably discussed, ought to be included in a book intended for innocent laymen.

Volume IX consists of three parts. The first, on *Advertising*, by Lee Galloway and G. H. Harmon, is a very interesting book; particularly so are the chapters on the history and psychology of advertising and on the construction of advertisements. Part II, by R. S. Butler discusses *Buying and Selling*. For the business man much of the material included is of practical value. If the author is to be believed, only paragons of virtue and capacity can qualify for the salesman's calling (chapter xiii). Hardly less exacting are the requirements for successful buying: the buyer must have good judgment and system, coupled with intelligence, tact and understanding. Part III of this volume, by Lee Galloway, concerns itself with *Credit and the Credit Man*. The author sketches rather briefly the development of credit and the outlines of the credit system in modern economic society and then turns to the purely business aspects of credit. Some of his material is suggestive but it is not presented in the most stimulating manner.

The last two volumes under review deal with concrete problems of accounting and thus supplement Volume III, which was concerned with the general theory and practice of accounting. Volume X, *Accounting Systems*, by E. P. Moxey, jr., is in the nature of a source book, in which are described the systems appropriate to different lines of business. Volume XI, by Seymour Walton and S. W. Gilman, treats of *Auditing and Cost Accounts*. Many questions of fundamental importance in classification and definition are noted in the discussion of the first of these topics; and the presentation of the second gives valuable insight into the difficulty of accurately determining "costs."

In view of the part that Wall Street has played and still plays in the history of the United States, it is strange that the work done there has found no such interpretation as that of Lombard Street has received in the writings of Bagehot and Withers. The best book on the subject is still Sereno S. Pratt's *The Work of Wall Street*, of which a new and enlarged edition has now appeared (New York, D. Appleton and Company, 1912; xxiii, 440 pp.). The new edition resembles the earlier one in structure and in general point of view, but a considerable amount of descriptive and illustrative material has been added. In the appendix is included the report of the Hughes commission.

While the vagaries of the stock market and the peculiar mental processes of speculators are often the subject of comment, no serious attempt has heretofore been made to analyze carefully the influence of

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changing mental attitudes on the drift of market prices. A very interesting and suggestive beginning of such an inquiry is to be found in G. C. Selden's *Psychology of the Stock Market* (New York, Ticker Publishing Company, 1912; 120 pp.). Mr. Selden, breaking ground in a new field, considers naturally only the more striking phenomena. He interprets psychologically the speculative cycle, the panic and the boom. He discusses most entertainingly the peculiar inverted reasoning that so often characterizes the speculator and the general tendency to interpret conditions in the light of desire rather than in that of reason. Throughout the discussion the author shows that, while the broad and general movements in prices are due to economic conditions, the smaller movements are largely the result of psychological changes. At the end of the book he gives a few rules intended to assist the "regular" in keeping his mental processes in a state of disentanglement. He overlooks, however, the most important rule for the newcomer, namely, "stay out."

A field that has been strangely neglected by scientific students is that of the determination of prices on the speculative exchanges. We have numerous studies of speculation and speculative markets, but very few careful analyses of the forces that come to a focus in these markets—forces that, taken as a whole, are responsible for prices. A very interesting and valuable study in this field is Dr. W. Prion's *Die Preisbildung an der Wertpapierbörse* (Leipzig, Duncker and Humblot, 1910; xii, 216 pp.). Dr. Prion confines himself for the most part to industrial stocks on the Berlin exchange; but in this relatively narrow field he brings out one fact of importance, namely, that each market and each class of securities is peculiar, and must be independently studied if the actual process of price determination is to be understood. It is to be hoped that Dr. Prion will find it possible to give us the results of studies in the produce markets also. Students will be grateful to him for valuable suggestions relating to method.

A most readable description and discussion of the various forms of business enterprise in Germany is found in Dr. R. Liefmann's *Die Unternehmungsformen* (Stuttgart, E. H. Moritz, 1912; 216 pp.). This little book is evidently intended for popular consumption, as the style is simple and direct and notes are relegated to the end of the chapters. The most suggestive portions of the book are those dealing with the "Volkswirthschaftliche Bedeutung der Kapitalgesellschaften," and the last section of the last chapter, "Die Grenzen der öffentlichen Unternehmungen."

Senator Theodore E. Burton's *Corporations and the State* (New

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York, D. Appleton and Company, 1911; xvi, 249 pp.) goes over familiar ground in an interesting manner. A wide range of topics is covered: the origin of corporations, trusts and public policy toward them, banking corporations, federal incorporation (here the author expounds and defends President Taft's program) and the recent Supreme Court decisions. The book is based on lectures delivered at the University of Pennsylvania.

An interesting, even if not convincing, defence of stock-watering is to be found in W. H. Lyon's *Capitalization: A Book on Corporation Finance* (Boston, Houghton, Mifflin Company, 1912; vii, 296 pp.). The author, a New York corporation attorney, is also professor of finance in the Amos Tuck School of Administration and Finance at Dartmouth College, and the book grows out of his work in both capacities. The range of topics is restricted, when the book is compared with, say, Meade's *Corporation Finance*, but the topics selected for discussion are treated with vigor and clarity.

Railroad Finance, by Frederick A. Cleveland and Fred Wilbur Powell (New York, D. Appleton and Company, 1912; xv, 463 pp.), is a trifle heavier in style than such a book need be. It is a useful manual, however, containing a wealth of descriptive detail, and giving some attention to questions of public policy. There is an excellent bibliography, covering nearly eighty pages.

Professor Ernest L. Bogart's *Economic History of the United States* has appeared in a second edition (New York, Longmans, Green and Company, 1912; xv, 597 pp.). So radical has been the revision that, as the author remarks in the preface, the book may almost be regarded as new. Currency, labor and conservation are some of the topics which receive more extended treatment. In its new form the book deserves and will doubtless enjoy even wider popularity than it has previously attained.

State banking before the Civil War would hardly be adjudged an inspiring theme of investigation. Yet for that period there is needed an intensive study of this subject in each of the states of the Union. For the state of Indiana a beginning has been made by Logan Esarey, in his *State Banking in Indiana, 1814–1873* (Indiana University Studies, Volume X, number 2, April, 1912; pp. 217–305). The author, however, is more interested in the political and legislative aspects of the subject than in its economic aspects. Thus, while his study is interesting and valuable so far as it goes, it leaves room for a comprehensive economic survey that will deal with the development of banking principles and with the contemporaneous influence of the banks on economic progress.

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A fourth edition of Professor David R. Dewey's *Financial History of the United States* (New York, Longmans, Green and Company, 1912; xxxvii, 544 pp.) has recently appeared. The excellence of this work is attested by the fact that it has gone through four editions (not including two reprints) since it first appeared in 1903. The new edition brings the fiscal history of the country down to the current year.

Under the collective name of "Forces productives de la France" the Société des Elèves et Anciens Elèves de l'École des Sciences Politiques has been publishing a series of papers presented at periodical conferences. This year the section on finance and legislation arranged a most interesting conference on the great financial markets of the world. Papers were presented by Professor Raphaël-Georges Lévy, M. Albert Aupetit of the Banque de France, Professor Lucien Brocard, M. Jacques Armagnac, M. Gabriel Delamotte, M. Georges Aubert and other well-known authorities. Professor Lévy's paper dealt with the New York money market. The proceedings of the conference are now available in printed form, *Les Grands Marchés financiers* (Paris, Félix Alcan, 1912; 363 pp.). While the facts that are presented in the papers are for the most part familiar, the wide field that they cover and the interpretation put upon the facts by distinguished scholars make the collection a valuable one.

A new and promising medium for the publication of scientific material is afforded by a series of monographs entitled: *The University of Illinois Studies in the Social Sciences* (Urbana-Champaign, published by the University, 1912; numbers 1, 2, and 3; 358, 126 pp.). The University is to be congratulated, both upon the attractive appearance of the series and upon the quality of the work presented in the first numbers. Professor Bogart's *Financial History of Ohio* (numbers 1 and 2) sets a worthy standard for what may follow. Like all of his work, this monograph is thorough and scholarly. The third number is a doctoral dissertation in municipal finance, by Lent D. Upson. It gives the results of an interesting investigation of the sources of revenue in the cities of Illinois. The new series will help to win a wider recognition of the value of the work that is being carried on at the University of Illinois in the social sciences.

The French tariff revision of 1910 produced a large output of literature on customs policy. *Les régimes douaniers* (Paris, Armand Colin, 1910; 320 pp.), by Marcel Moye and Bertrand Nogaro, is an unpretentious little work, of which the first part deals with customs tariffs in general, tracing briefly the development of modern systems, especially that of France, while the second half takes up in some detail the French

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administration of customs. A series of appendices give half a dozen recent documents. The book is primarily descriptive and is well written. Of a somewhat different type is Augier's and Marvaud's *La Politique douanière de la France* (Paris, Félix Alcan, 1911; vi, 406 pp.) with a preface by M. Klotz. Written from a protectionist point of view, it sketches the development of French policy from 1892 to 1910 and discusses the policies of the more important states and their reaction on France. It then considers the actual commercial relations of France with other countries, as determined by economic conditions and by conventions. Twenty-one countries are taken up in as many chapters, which deal with the state regulation of commerce and the actual condition of trade in each. The authors' conclusion is favorable to the maintenance of the conventional system and to further specialization of the general tariff.

A balanced view of the gains and losses of protection cannot reasonably be looked for in the organ of the International Free Trade League. *The Burden of Protection* (London, P. S. King and Son, 1912; vii, 126 pp.), edited by G. M. Baskett, secretary of the league, consists of fifteen short essays by writers in all parts of the world, each trying to show the evil protection has done in his own country. The spirit of the work may be indicated by a quotation from the editor's introduction: "It should be as ridiculous to say that Free Trade benefits here and would not benefit there, or that it was profitable then and harmful now, as it would be to say that the law of gravitation is operative in England and not in France, or that it once used to act. If it is a law, it is universal; it must profit everywhere, if anywhere." Notwithstanding their bias, several of the contributions are distinctly good and informing, though necessarily short. The articles of Koedt on Denmark, Brentano on Germany, Matlekowitz on Hungary, Pulsford on Australia and Evans on South Africa are all worth reading; and Lord Welby, the chairman of the Cobden Club, makes an interesting attempt to explain Great Britain's acceptance of free trade and France's continuance in protection by the alleged more difficult fiscal and industrial situation of the former following the Napoleonic struggle. The explanation might be important if true. The indefatigable Daniel Bellet furnishes a contribution charging the high price and small consumption of meat in France to protection, and Byron W. Holt attributes to the same cause pretty much everything that is wrong in our social and industrial affairs. Most of the writers appear rather hopeful as to the future of free trade.

Another attack on the protective system is made by J. J. Harpell in

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his book on *Canadian National Economy: The Cause of High Prices and their Effect upon the Country* (Toronto, The Macmillan Company of Canada, 1911; 182 pp.). Like most thinkers of his type, the author is confident that Canada's protective tariff is the main cause of high prices and of the growth of combinations in that country. He undertakes to show that protection is making the extractive industries unprofitable and is piling up great fortunes in the hands of the few who control the centralized manufactures. Incidentally, he is much displeased with Canada's branch banking system, which he charges with aiding the process of concentration, and he urges the development of coöperative production and distribution, though its relation to the tariff is a little hard to see. The political evils of protection also are emphasized. It cannot be said that the book is a weighty contribution to the subject with which it deals.

The origin of the factory system and its relation to the modern democratic movement is the theme of Mr. Jonathan Thayer Lincoln's little book, *The Factory* (Boston and New York, Houghton, Mifflin Company, 1912; xiv, 109 pp.). The essay is based on a series of lectures delivered by Mr. Lincoln at the Amos Tuck School of Administration and Finance, of Dartmouth College. Mr. Lincoln is a socially minded business man who is sympathetic toward the modern democratic movement in industry and politics. He is gifted with insight as well as with breadth of view, and his interpretations of modern industry reflect both these admirable qualities. His previous work, *The City of the Dinner Pail*, was noticed in volume xxv of this Quarterly, page 186.

In October, 1911, there was held in the Crystal Palace in London an important "National Congress on Rural Development and Small Holdings." The object of the congress was to discuss ways and means of furthering the interest and providing for the extension of small-scale agriculture. Henry W. Wolff, the author of *People's Banks*, the most comprehensive study in English of coöperative credit, read an excellent paper on that subject. There were other papers on coöperation among small farmers, on the productive possibilities of English land, on the equipment of small holdings and last, and perhaps most important, on rural education. These papers, together with the discussion that they occasioned, are presented in a little volume entitled *Rural Development and Small Holdings* (London, P. S. King and Son, 1912; xii, 247 pp.). While the book will naturally be of particular interest to Englishmen, there are contained in it many suggestions of value to American students of agriculture.

A report of the thirteenth session of the International Statistical In-

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stitute, held at The Hague, September 4–8, 1911, together with other information of value to those interested in statistics, is contained in the first three numbers of volume xix of the *Bulletin de l'Institut International de Statistique* (The Hague, W. P. Van Stockum and Sons, n. d.; 442, 475, 323, xc pp.). Among the papers of international interest presented were: "The Fecundity of Marriages," by Dr. Edmond Nicolai, with a discussion of the subject by Dr. Jacques Bertillon, Dr. Georg von Mayr and others; "International Statistics of Finance," by Dr. Friedrich Zahn, director of the Bavarian Statistical Office; "The Movement of Prices," by Dr. Alfred de Foville (in another part of the volume will be found tables of index numbers for various countries presented by other statisticians); "Criminality and the Causes of Crime," by MM. de Roos and Yvernès; "International Statistics of Unemployment," by Dr. Louis Varlez; "Mortality and Morbidity of Infants," by Dr. Henri Willem Methorst; and the report of Dr. Jacques Bertillon on the progress of the international classification of occupations and of the causes of death. The first number of the volume contains appreciations of the life and works of Sir Francis Galton, who died January 17, 1911; of Emile Levasseur, who died July 10, 1911; and of Sir Robert Giffen, who died April 12, 1910. In the second number is a list of the members of the Institute on January 1, 1912, together with their places of residence, their titles and honors and the year of their admission to membership. This information will prove valuable to statisticians and others for purposes of reference. An analysis by subject and author of all the reports, papers, and discussions published in the first nineteen volumes of the *Bulletin* of the Institute is printed in the third number of this volume. This analysis furnishes a valuable reference index to important statistical information of wide and growing interest.

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